

THE ENGLISH REVOLUTION AND THE DOCTRINES
OF RESISTANCE AND NON-RESISTANCE, 1688 TO
1714 : A STUDY IN SOVEREIGNTY

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NOTE

Throughout this study the following contractions are used :-

Grey's Debates = Debates of the House of Commons from the year 1667 to the year 1694. Collected by...Anchitel Grey.

Parl.Hist. = Cobbett's parliamentary history of England.

S.T. = Cobbett's complete collection of state trials.

S.T.Wm.III = A collection of state tracts, publish'd on occasion of the late Revolution in 1688 and during the reign of King William III.

Som.T. = Somers (John Somers, Lord). A collection of scarce and valuable tracts.

When no special edition is mentioned in the footnotes, the edition is the one given in the bibliography. Most of the pamphlets cited were published anonymously. When the writer is known, he is mentioned in the notes if he is of sufficient importance, e.g. Burnet, Defoe, etc. When the author is not given, it does not follow that he is unknown. A sufficient part of the title is given to enable it to be found in the bibliography, where the author-

ship and full details are given. In the bibliography anonymous works are entered under the author's name where known, with a cross-reference from the title. Anonymous works, whose authors are unknown, are entered alphabetically under the first word, excluding the article.

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CHAPTER ONE

The doctrines of resistance and non-resistance : Introductory

CHAPTER ONE INTRODUCTION

Over two thousand years ago, Aristotle wrote: "It is evident that every form of government or administration, for the words are of the same import, must contain a supreme power over the whole state".⁽¹⁾ The nature of the Greek city-state made such a theory tenable, but (after the fall of the Roman Empire, at any rate), the idea could find no place in mediaeval political thought. Not till order had been restored out of a disorganised European society, could a political situation be attained in which Aristotle's concept could have any relation to facts. The gradual centralisation of power in the king and the growth of nation^{al} consciousness of peoples, settled within fixed territorial

(1) Politics, Bk. iii, Chap. vii.

limits, were the essential factors in the growth of modern states. When the power of a state came to be personified in a national monarchy, political theory came to be dominated by the theory of sovereignty.

The determination of the locus of the supreme power in a state was the most characteristic legacy of the Middle Age. For, with few exceptions, mediaeval political philosophy had treated kingship as the only conceivable form of government. But, as to the content of this sovereignty, the Middle Age left no guiding rule. Kingship was generally regarded as a divine institution, but this did not mean that a king had the quality of absolutism. It is true that, since the king was ordained by God, absolute obedience must be rendered to him. But a cardinal feature of the mediaeval conception was that the king had not only the material welfare of his subjects in his keeping, but also their spiritual. Thus

his functions were twofold, and by no means the less important were the ethical.^① Hence a distinction was drawn between a true king and a tyrant. Though a true king was subject only to the laws of God, it was tentatively suggested that the same could not be said of a tyrant. But even where this reservation was made, it was held that the judge of the king's righteousness was the church and not the people. Herein we see the hierarchical doctrine of the state. In the Middle Age, the church claimed to be the arbiter in internal conflicts within a state, for the power of the pope was universal. In the disputes between the regnum and the sacerdotum, the anti-papal writers were wont to exalt the secular ruler. While the papal writers minimised the power of kings, their opponents tended to attribute to them almost sovereign rights within their own territories. It cannot, however, be said that it was the general rule

(1) See Carlyle, History of mediaeval political thought in the west, iii, pp. 115 et seq.

that the king was made absolute even by the supporters of his cause. In England, for example, until the Tudor dynasty possessed the throne, Englishmen, who gave their thoughts to politics, were, on the whole, disinclined to give to the king the quality of absolutism.^① But the actual course of political events forced upon men the realization of the necessity for an absolute ruler. And rather than be faced again with the disintegrating tendencies of a War of the Roses, men submitted willingly to the strong personal rule of the Tudors. The next subversive element which the Tudors had to face was an element common to all western Europe, viz. the Reformation.

The dispute for supremacy in the Middle Age between the universal church and secular rulers, while it had at times led to armed conflict, was, upon the whole, theoretical

(1) Cf. Glanvil, De legibus et consuetudinibus regni Angliae (c.1189).

Bracton, De legibus et consuetudinibus Angliae (c.1256).

Fortescue, De laudibus legum Angliae (c.1470).

In the main, it had been an academic controversy waged by scholars. The Reformation brought the controversy down to the level of the people. At a time when national states were almost in their infancy, their growth seemed to be threatened by the new religious upheaval in Christendom. While in the Middle Age a ruler had to contend with a united church, he often found himself the weaker party in the struggle. In this connection we may note that the church in England claimed the honour of winning and preserving our liberties. The church, while it was on the side of liberty, was a check on the growth of royal absolutism. It was the unequal struggle between an individual monarch and the universal church which claimed world-wide dominion over the bodies and minds of all men.

This state of affairs was shattered by the Reformation. Subject was divided against subject within the same state. The king, if he were a Protestant, no longer fought single-handed against the Roman Catholic Church. He

had now the alliance of men of the new religion against men of the old. Never before was the biblical warning that a nation divided against itself cannot stand brought home to the minds of men as it was in the sixteenth century. The growth of national unity seemed to be threatened with destruction in its infancy by religious factions. Hence the necessity for a ruler to take his stand for one religion or the other, to foster the one chosen and ruthlessly attempt to stamp out the other. That a state could not embrace both the old and the new, was admitted in the German Empire at the Peace of Augsburg when the maxim '*cuius regio eius religio*' was established. Men of the proscribed religion became enemies of the state, for, in the life and death struggle, toleration was impracticable. In a Protestant state, the Roman Catholics were persecuted : in a Roman Catholic state, the Protestants. Were the persecuted to submit tamely to persecution ? In self-defence, the minority were driven to the enunciation of a

doctrine of resistance against the king. The claims to the right of rebellion were not new, but their wide recognition, as formulated in a doctrine, first assumed importance in Europe in the sixteenth century owing to the political consequences of the Reformation.

Subjects' allegiance to their prince came to be determined by their religious principles. The Roman Catholic Church freed subjects from their allegiance to a heretical king.^① Jesuits taught the right of tyrannicide.^② Presbyterians, too, such as George Buchanan, held that it was not only a right, but a duty for subjects to depose a Roman Catholic king.^③ The middle way between these two extremes is represented by Lutheranism. To Luther, secular authority, at its best, was but a necessary evil. The contempt for

(1) Cf. Pope Pius V issued a Bull of Excommunication and deprivation against Elizabeth in 1570:- "The sentence of our holy Lord Pope ... against Elizabeth ... wherein ... all her subjects are declared to be absolved from the oath of allegiance and whatever duty they owe to her".

(2) Cf. Mariana.

(3) De jure regni apud Scotus dialogus (1579).

civil government, carried to limits of absurdity by some of his extreme followers, led Luther to enunciate the doctrine of passive obedience and to admit of the state's right to regulate the outward forms of religion, and, if necessary, to use force. But Luther weakened in his attitude to passive obedience, following on the rupture between the Emperor and the Lutheran princes, and he came to hold the belief that Christians had the right of self-defence against a ruler who threatened their religion.

The mediaeval distinction between a king and a tyrant is found in Calvin's political thought. "Magistrates derive their authority from God alone; should they rebel against God, their commission ceases and they are magistrates no more".⁽¹⁾ "If they command anything against Him, let us not pay the least regard to it".⁽²⁾ But the subject's disobedience

(1) This, as we shall see, was the central idea in Hoadly's political thought.

(2) Institutes, Bk. iv, chap. 20, § 32.

must be passive.^① The latitude Calvin allowed to the individual's own determination in this matter made his attitude to the doctrine of resistance sufficiently ambiguous to justify Presbyterians - who were Calvinists - in adopting whole-heartedly the theory of the right of resistance. On a broad analysis of the thought of Luther and Calvin, it is safe to say that Luther inclined towards state authority leaving the ruler as the judge, whereas Calvin laid stress on the individual and the individual's right to self-determination in religion and political obedience.

The English Reformation, which was Lutheran in spirit, adopted the doctrine of non-resistance, and political thought in England in the sixteenth century was mainly concerned with this doctrine. It was

(1) Professor Allen's view is that Calvin "taught a doctrine of absolute non-resistance, qualified only, as it was qualified by every one in the sixteenth century, by an obligation in some cases to a passive disobedience." - A history of political thought in the sixteenth century. (1928), p.58.

taught by the most celebrated clergymen and laymen, and was incorporated in the Injunctions of 1536, 1538 and 1547 and in the Homilies of 1547 and 1571.^① The office of magistrate was held to be the ordinance of God. Although writers in the sixteenth century spoke of prince or king, they did not mean to convey the idea that monarchy was the only form of regiment ordained by God, or even that God specially favoured it.^② Nor was the supreme magistrate the only governor against whom there could be no resistance. "The religious duty of obedience to the prince was constantly associated with the conception of a similar duty in relation to every recognised form in human society. A divine

(1) See Allen, op. cit., pp. 125 et seq. The Homily against rebellion was one of the main props of the argument in favour of non-resistance both before and after the Revolution of 1688.

(2) Hooper carefully explained that the powers St Paul referred to in Rom. xiii 'be not only king and emperors, but all such as be appointed to any public office and common regiment, either for a king, where there is a kingdom, or in the place of a king, where as the state of the commonwealth is no monarchy'. - cited Allen, op. cit., p. 127.

right was attached, not only to the prince,[○] but to the father in the family, the landlord on his estate, even to the common employer of labour."^① The Tudor conception of the body politic was derived from the analogy of the natural world. Society was static; God had put man into his allotted niche, and he should remain there. God made rulers to command and subjects to obey. The king is the head, and the people are the members, of the body politic. This is the essence of Tudor political thought. All, who have been ordained to obey, must obey all commands not contrary to the word of God. In the Book of Homilies, issued by Edward VI, passive obedience was enjoined where a subject could not in conscience obey actively. The doctrine of passive obedience admitted of no exceptions. "Perhaps the most striking peculiarity of England in the sixteenth century was the general refusal to admit that

(1) Allen, op.cit., p.135.
See Appendix I, Note 1.

any case can be made for a right of rebellion."^① The Tudor doctrine was frankly theological, but it was accepted by statesmen on the grounds of expediency.

Towards the end of the sixteenth century, political thought in France tended towards the theory of absolutism. The Huguenots, who had advocated resistance, made a complete volte face, and after 1685 convinced themselves that nothing could justify rebellion.^② To support the candidature of Henry of Navarre to the throne, they put forward claims of divine hereditary right of kingship.

Jean Bodin, the greatest of the Politiques, and, indeed, the greatest political thinker since Aristotle, propounded in his De Republica^③ a theory of the state designed

(1) Allen, op.cit., p.131.
See Appendix I, Note 2.

(2) Ibid., p.377.

(3) First published in French in 1576. Bodin issued a Latin translation in 1586.

to provide a solution to the political problems of his own time. Like Hobbes, he wrote with a practical object in view. France was in a state of anarchy resulting from the internecine religious wars involving the conflicting claims of religion and loyalty. Bodin's political thought is noteworthy for its definite conception of sovereignty. He was, however, as much a mediaevalist as a modern, and hence his theory of sovereignty has been aptly described as being 'at the crossroads'.^①

Bodin endeavoured to establish the claims of an absolute monarch to undivided allegiance, and with this object in view, he tended to enunciate the maxim that the sovereign was *legibus solutus*. "Majesty or sovereignty", he wrote, "is the most high, absolute and perpetual power over the citizens and subjects in a commonweal."^② Sovereignty, he said, could

(1) M.A. Shepard, Sovereignty at the crossroads: a study of Bodin, p.580. (Political Science Quarterly, vol.45, 1930.)

(2) De Republica, Bk. I, chap. viii.

reside in one, the few or the many,^① but he was mediaeval in his definite preference for monarchy. The attribute perpetual found in the French edition is omitted in the Latin edition where we have simply "summa in cives subditos legibus saluta potestas". The omission in that place is not material, for elsewhere in the Latin edition he requires the principle of permanence. In his explanation of what he means by permanence, Bodin is a little unsatisfactory. A magistrate, holding office for a limited and definite period, like the Roman dictator, is not sovereign. "We must understand the word perpetual for the term of the life of him that hath power".^② Bodin did not argue for a hereditary monarchy, for he recognised elective monarchy

(1) Op. cit., Bk. II, chap. 1.

(2) Ibid., Bk. I, chap. viii.

as a legitimate form. The only stipulation he makes is that the king shall be invested with sovereignty for life.

The sovereign is *legibus solutus*. He is not bound by the law of his predecessors, and therefore much less is he bound by the laws and ordinances which he makes himself. A man cannot give a law to himself for he cannot give a command to his own will. Sovereignty consists in giving laws in general to subjects without their own consent. Bodin considers whether the power of an English parliament conflicts with his conception of sovereignty of the prince and concludes that it does not. This, as we shall see, was the interpretation of the place of the English parliament in our polity taken by the divine right theorists in England in the seventeenth century and by non-jurors such as Kettlewell^① and the High-Church Tories after the Revolution.

The *éstates* of the people, both in France and in England, in Bodin's view, have no share

(1) See below, p. 243.

of sovereignty.^① In making the prince legibus solutus, did Bodin free the prince from all restraint ? Were there no grounds at all for rebellion ? Bodin states emphatically that the sovereign prince is under the laws of God and nature. "But as for the laws of God and nature", he says, "all princes of the world are unto them subject; neither is it in their power to impugn them... Wherefore in that we said the sovereign power in a commonweale to be free from all laws, concerneth nothing the laws of God and nature."^②

If, then, the prince breaks the laws of God and nature and the leges imperii, can he be restrained by his subjects ? Does a right of rebellion follow therefrom ? The general opinion among scholars is that in Bodin's thesis restraints put upon the sovereign are ethical only in character. A different view is taken by Shepard.^③

(1) See Appendix I, Note 3.

(2) De Republica. English tr.(1606), Bk.I, chap.viii, p92.

(3) Op. cit., pp.580 et seq.

Bodin was cited by a writer in 1714 as an author who upheld the right of resistance. See Parliamentary right maintain'd, etc., p.57.

In 1606 there was published in London an English translation by Richard Knolles of Bodin's De Republica. In the preface to the reader, Knolles says that men throughout the ages "have framed divers and farre different formes and fashions of commonweales: some of them giving the sovereigntie unto the people in generall, some unto the nobilitie alone, and some others (better advised than the rest) unto one most royall monarch; which both by reason and experience being found the best, is not onely of the more civile nations, but even of the most barbarous people of the world ... in the governments received".^① In introducing Bodin to the reader, he says: "The chiefe scope and drift of him in the whole worke being to make the subjects obedient unto the magistrates, the magistrates unto the prince, and the prince unto the lawes of God and nature".^②

While Bodin was the forerunner of the non-resistance theorists in England, the author of

(1) P. 4.

(2) P. 5.

the Vindiciae contra tyrannos^① and Althusius^② were the forerunners of the resistance theorists. Althusius and his school, known to their adversaries as 'monarchomachs', taught that sovereignty originated in the people and that it was inalienable. The people, in whom that sovereignty resided, were regarded as the governed part of the state. The governor was outside the body of the people and was bound to the people by contract. The governor's power was fiduciary, and if he were guilty of a breach of trust, he dissolved the contract, and the people were justified in resisting him. It was a mediaeval theory of the Empire that the source of the Emperor's authority was the Roman people. But the power was alienated and the ruler was legibus solutus. Bodin, too, admitted

(1) 1579. The Vindiciae was burned by the University of Cambridge in 1622. See The History of passive obedience (1689), p. 15. An English translation of the Vindiciae was published in London in 1689.

(2) Politica methodice digesta. First published in 1603. The 3rd ed. (1614) is the final form and is the edition reprinted with an introduction by C.J.Friedrich. (1932.)

that the sovereign's authority might emanate from the people, but when once surrendered, it was irrecoverable. Althusius, therefore, in opposition to this view, maintained that the sovereignty was not only originally in the people but permanently. The link between the thought of Althusius and of Locke, Defoe and Hoadly is so close that one is surprised that Althusius is not given a prominent place in post-Revolution thought.

A thinker who was frequently cited in England after 1689 was Grotius.^① Grotius occupied a position midway between Bodin and Althusius. Against Bodin he argued that the sovereign power was not necessarily absolute; for, contracts may be made between ruler and ruled whereby an indefinite number of rights may be taken from the sovereign. Sovereignty, too, was divisible. It may be divided between a king and a popular assembly. In defence of

(1) De jure belli ac pacis (1625).

this arrangement, he said: "Many persons allege many inconveniences against such a two-headed sovereignty, but in political affairs nothing is quite free from inconvenience".^① This division of sovereignty, as we shall see, had a bearing on English political thought.^② In opposition to Althusius, he repudiated the separation of ruler and ruled. Sovereignty, he said, might reside in the whole body as general bearer and in the governor as special bearer.^③ This approach to the idea of state sovereignty was not developed by Grotius,^④ nor was developed in England although some writers^⑤ between 1688 and 1714 tentatively made the suggestion. Grotius departed

(1) Op. cit., I, chap., 3, § 17.

(2) See below, chap. VI on parliament.

(3) "The theory propounded by Grotius of a double 'subject' of sovereignty approached much closer to the conception of the sovereignty of the state." - Gierke, Natural law and the theory of society, 1500 to 1800. Tr. E. Barker (1934), I, p. 55.

(4) "But even Grotius ... fails none the less to attain a true conception of the single personality of the state." - Ibid.

(5) See Appendix I, Note 4.

further from the theory of Althusius by allowing that the people might alienate their sovereignty. Grotius treated sovereignty like a property right which might be enjoyed in full ownership or by mere usufruct. Hence his ideas could be applied to absolute government or to popular government.

When the comprehensive Elizabethan church settlement proved inadequate to meet the aspirations of the growing section of Puritans within the Anglican Church, the doctrine of non-resistance took on a much more politico-ecclesiastical aspect. The doctrine of the right of resistance was associated with Catholics and Presbyterians, and the Puritans were closely identified with the latter. To meet the subversive element in the Church and State, the doctrine of non-resistance was assumed by the Anglican hierarchy as an integral part of its teaching. From the general enunciation of the doctrine of obedience to all superiors,

we pass to the Stewart particular enunciation that the king alone is the 'supreme power' and is alone ordained by God as the supreme magistrate. The new development is summed up in James's dictum: "No bishop, no king".

The conception of the divine right of magistracy under the Tudors became the divine right of kings under the Stewarts: no longer was it merely a general command of non-resistance to the 'powers that be', but the specific command of non-resistance to the personal king. From being an essential social moral precept, it became the exclusive property of the king and his ally the Anglican Church. We must note, also, that the obligation was not to any king but to an hereditary one. Convocation incurred the censure of James I for omitting in 1606 this hereditary element from its canons.

Two quotations will serve to illustrate the doctrine in the pre-Rebellion period.

They are from the sermons of Manwaring and Sanderson. These two men's works have been selected because they were regarded as authorities on the doctrine and were most frequently cited after the Revolution.

Manwaring said:

"Among all the powers ordained by God, the royal is the most high, strong and large. No power in the world or in the Church can lay restraint upon it ... No persons, be they never so great, can be privileged from their power, nor exempted from their case, be they never so mean. The laws take their binding force from the supreme will of their high lord."^①

Bishop Sanderson said:

"Not for the maintenance of the lives or liberties either of ourselves or others; not for the defence of religion; not for the preservation of a church or state; no, nor yet, if that could be imagined possible, for the salvation of a soul; no, not for the redemption of the whole world" was it lawful to resist.^②

(1) Quoted by Gooch, Political thought, p. 18.

(2) Seventeen sermons ad aulam, sermon xii, Hampton Court, July 26, 1640, in Works (ed. W. Jacobson, 1854), i, p. 298. This passage was cited by the defence at the Sacheverell Trial. (S.T., xv, 255)

Robert Fleming, referring to this statement of Sanderson's, says; "Unless ... such divines be idiots themselves, and take all others to be such, they had best let arguments, drawn from reason, alone; which they seem so little to understand." - The history of hereditary right, etc. (1711), p. 26.

The doctrine, under James I and Charles I, however, was not universally held. It made few converts outside the Anglican clergy.^① It is noteworthy that Manwaring was impeached by the House of Commons in 1628 for his sermon on non-resistance.^② Bishop Burnet held the view that the full acceptance of the doctrine was not attained till after the Restoration.^③ Archbishop Ussher was asked by Lord Strafford,^④ on the eve of the Rebellion, to write on obedience to the king. He complied in a work wherein he said: "God's word is clear in the point. Whosoever resisteth the power, resisteth the ordinance of God, and they that resist shall receive to themselves damnation, and thereby a necessity is imposed upon us, of being subject even for conscience

(1) Gooch, Political thought, p. 21.

(2) S.T., iii, 335-358.
See Appendix I, Note 5.

(3) Burnet in his speech at the Sacheverell Trial. S.T., xv, 484-490 passim.
This was the common view after 1689. Cf. Ridpath, The peril of being zealously affected but not well, etc. (1710), p. 8.

(4) Elrington, Life of Ussher. (1848), p. 305.

sake, which may not be avoided by the pretext of any ensuing mischief whatsoever."⁽¹⁾

The doctrine of non-resistance was in abeyance during the Commonwealth period,⁽²⁾ but it was revived with greater life and vigour after 1660.⁽³⁾ The work of Ussher, to which we have referred, was not published till 1660, when it was thought to be sure of a welcome from the English public.⁽⁴⁾ More important than the treatise itself was the introduction written by Bishop Sanderson.⁽⁵⁾ Ussher displayed a wealth of learning but little political sagacity. He based his thesis on

(1) Ussher, The power communicated by God to the prince, etc. (1661). This was cited by the Defence at the Sacheverell Trial. S.T., xv, 254.

(2) See Appendix I, Note 6.

(3) See Appendix I, Note 7.

(4) The MS. had been lost. It was found before the Restoration, "but it was not a time to publish such a treatise, and they were obliged to wait for a more favourable opportunity." - Elrington, Life of Ussher, p. 306.

It is very significant that the third edition was published in 1710 at the height of the Sacheverell controversy.

(5) The author of The history of passive obedience calls it "that admirable preface." p. [3.]

the Old Testament, a narrow interpretation of St Paul and the early Fathers. Sanderson, on the other hand, touched on more vital and practical issues.

"That the original of all government is from the people, and that the power which kings and princes have was derived unto them by way of pact or contract, would thence infer, that princes can therefore claim no more power as of right belonging unto them than the people shall think fit to entrust them withal: which the people may from time to time and at all times, as they shall see cause in order to the public weal and safety either enlarge or restrain at their pleasure." ①

He gives also a very interesting analysis^② of the absurdity of the original contract on practically the same lines as T.H.Green^③ was to adopt three hundred years later.

Sovereignty, says Sanderson, resides solely in the king.

"The known laws of the land have declared it so fully and particularly the Oath of Supremacy expressed it so clearly, that any

(1) Ussher, op. cit. (Introduction by Sanderson, p. 32.)

(2) Ibid.

(3) Cf. T.H.Green, Lectures on the principles of political obligation. (1911 ed.), p. 72.

man of ordinary capacity may understand it as well as the deepest statesman in the world. That which some talk of, a mixt monarchy (which by the way is an arrant bull, a contradiction in adjecto, and destroyeth itself) and others drawn of such a co-ordination in the government, as was hatched amidst the heat of the late troubles, but never before heard of in our land, are in very truth no better than senseless and ridiculous fancies." ①

This was written in 1661. In 1684 - four years before the Revolution - Parker expressed the identical thought in his religion and loyalty.

"For where the sovereignty of this kingdom resides, is a thing so easily and vulgarly known, that to search it out requires no deep inspection, either into the laws of the land or the nature of government. The Oath of Supremacy is so full a declaration of it, that no man, whoever took it, can after that, deny the sovereign power to reside in the king alone without perjury." ②

This doctrine of the sovereignty of the king was now universally taught and accepted by Anglican churchmen as applying exclusively to a king by divine right of hereditary succession. The doctrine now stressed hereditary

(1) Ibid., p. 47.

(2) Parker, Religion and loyalty. (1684), i, pp. 100-101.

right, for it was seen that non-resistance without this qualification would justify Cromwell's government.^① The doctrine with this narrow interpretation became an article of faith to which all Church of England^{men} prescribed. The Whig churchmen such as Burnet^② and Tillotson^③ were just as warm supporters as the High-Church Tories.

The significance of this church teaching cannot be overemphasised in the light of the subsequent development of political thought. And in view of the Revolution and the theories which were evolved in its support, the fact that the doctrine of non-resistance was embodied in statute law becomes exceedingly significant. A statute of 1660 enacted :

"That by the undoubted and fundamental laws of this kingdom, neither the peers of this realm, nor the Commons, nor both together in Parliament ~~nor the people~~ or out of parliament nor the people collectively or representatively, nor any other persons whatsoever, ever had,

(1) Cf. Feiling, History of the Tory party, p.490.

(2) See Appendix I, Note 8.

(3) See Appendix I, Note 9.

have, hath or ought to have any coercive power over the persons of the kings of this realm." ^①

By the Corporation Act ^②, all officers had to swear that they believed 'That it is not lawful up^on any pretence whatsoever to take arms against the king.' ^③

The Militia Act ^④ (1662) recited : "That both or either Houses of Parliament cannot ...nor lawfully may raise or levy war, offensive or defensive, against His Majesty,

(1) 12 Carl.II, c. 30, sec. 7.

This statute was cited by Harcourt in defence of Sacheverell in 1710 (S.T., xv, 209) and by Dodd (S.T., xv, 219).

It was also used by Whigs against Tories. Cf. Tories and Tory principles ruinous to both prince and people. (1714), p.45.

(2) 13 Carl.II, Sess. 2, c. 1.

(3) Cited by Harcourt in defence of Sacheverell. (S.T., xv, 209) Also cited by Dodd. (S.T., xv, 219)

(4) 13 & 14 Carl.II, c. 3, sec. 2.

his heirs, or lawful successors."^①

The Act of Uniformity^② (1662) required all ecclesiastical persons to subscribe to the 'truth' that "it is not lawful on any pretence whatsoever to take up arms against the king."^③ There were other statutes also which expressed this legal concept.^④

The controversies over the Exclusion Bill brought out many arguments which were to be used against James a second time ten

(1) Of this statute Peter Allix said : "It seems indeed a hard matter to reconcile the proceedings of the Convention with this Act of Parliament; yet if I may speak in judgment of the matter, I think this scruple also may be easily satisfied. We must remember that the law speaks only in favour of him who preserves the title of a king, and not of one who divests himself thereof by his unjust and arbitrary deportment." - An examination of the scruples of those who refuse to take the Oath of Allegiance. (1689) S.T.Wm.III, i, p.313.

This statute, however, was cited by Harcourt in defence of Sacheverell. (S.T., xv, 209) and by Dodd. (Ibid., 219)

The oath in the statute was repealed by 1 Wm. & Mary c. 8, sec. xi. See below, p.101.

(2) 13 & 14 Carl.II, c. 4.

Cited by Harcourt. (S.T., xv, 210) and by Dodd. (Ibid., 219)

(3) The oath was repealed by 1 Wm. & Mary, c. 8, sec. xi. See below, p.101.
See also Appendix I, note 10.

(4) Act for select vestries, Act for association, are examples.

years later. The exclusionists argued in favour of an absolute parliament which had, therefore, power to alter the succession.

"Government was appointed for those that were to be governed, and not for the sake of governors themselves: therefore all things relating to it were to be measured by the public interest and the safety of the people."^① Our oath of allegiance to the king's heir meant the heir by law, and the heir sanctioned by parliament was the only heir by law. Those who argued against the exclusion said monarchy was by divine right and no law could alter what God had settled. Lawyers held that parliament had no power to alter Magna Carta, which was a fundamental law, and they insisted that the law of succession to the crown was likewise a fundamental law.^②

(1) Burnet, History of his own time, ii, p.203.

(2) Ibid., p.205.
See Appendix I, Note 11.

The conception of the divine right of kings and the sovereignty of kings on the one hand, and on the other hand the corresponding denial of the right of resistance, the human origin of kingship, the sovereignty of the people and the original contract, may conveniently be found in the Decrees of the University of Oxford of 21st July, 1683.^① In the same year, Hickee propounded the same theory of absolutism in his Jovian: or an answer to Julian the Apostate.^② In 1684, Parkinson, Fellow of Lincoln College, was expelled from the University for maintaining that "the right and foundation of all power was in the people, that kings are accountable for their male-administration."^③

(1) See Appendix I, Note 12.

(2) By Samuel Johnson. Johnson made several replies, e.g. An argument proving, etc.

He calls this year "the year of Jovian 83 wherein these doctrines were published and rung all over the nation" - An argument proving, etc. (1692) in Works (1710), p. 261.

(3) Cited, History of passive obedience (1689), p. 18.

In the same year, 1684, Parker published his Religion and loyalty. This work, says the late Master of Balliol, marks the high-water mark in the doctrine of non-resistance and contains the best exposition of the doctrine.^① The high-water mark, however, may be put a little later. The doctrine, in its extremist form, was still cherished in the beginning of James II's reign.^②

We have considered the official doctrine of non-resistance in the Restoration period as embodied in statute law, as expounded by the Church through the expressions of its dignitaries, and as officially enunciated by the University of Oxford. There can be no doubt

(1) A.L.Smith, Cambridge Modern History, vol. vi, chap. 23.

(2) In 1690 a writer said that, ^{when} James ascended the throne, the 30th January became like the "Bacchanalia of Rome" or "a general madding day". - A modest inquiry into the causes of the present disasters in England, etc. S.T. Wm. III, ii, p.96. "When the late King James succeeded to the crown, the Tories deafened him with the noise of their addresses ... stuff'd with expressions of the most extravagant loyalty and unlimited passive obedience and non-resistance, professing them to be even principles of their religion and the very characteristic of their Church." - Faults on both sides. 2nd ed. (1710), p. 14.

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that this doctrine was the prevailing criterion of political obligation. Any attempt to formulate a doctrine of resistance was promptly suppressed. Parkinson, as we have seen, suffered in its cause. Russell died on the scaffold, refusing to the end to admit the validity of the doctrine of non-resistance. The controversy over the Exclusion Bill provided the most daring example of opposition to the doctrine of indefeasible hereditary right, an essential part, at that time, of the doctrine of non-resistance. It would indeed be surprising if the doctrine of resistance had had no supporters in the Restoration period among those who had not forgotten the Commonwealth. In this connection we may in conclusion note the opinions of a contemporary writer and of a modern historian.

Laurence Echard in his History of the Revolution (1725) gives a good account of the doctrine of non-resistance in the reign of Charles II, but he is unwilling to admit its universality which would have made his justification of the Revolution more difficult. "Yet after all ",

he says, "the notion of passive-obedience seems often to have been in an uncertain and fluctuating condition: sometimes sleeping, and other times rousing: now contracted, and then extended, as the dangers seem'd to arise from different quarters, or as various apprehensions, humours and provocations were excited and blown up amongst a divided people. The disputes about it were infinite."^① But he is bound to admit that "we are further to remember, that it was no small impediment to that Revolution of which we are endeavouring to give an account."^②

The historian, to whom we referred, is Ranke. He is inclined to believe that the doctrine of resistance was a potent force in the Restoration period. "The right of resistance", he says, "expressed in the covenant, and maintained by them, formed the basis of the

(1) Op. cit., p. 23.

Cf. "Having always thought, that the doctrine of passive obedience, or non-resistance of our lawful superiors, had been a doctrine founded in the holy scriptures ... and having lived so long to see that doctrine ridicul'd, and call'd the doctrine of the bow-string, and the assertors and the practisers of it exploded, as old Macrymists ... I could no longer forbear writing in the behalf of that truth which is eternal and unalterable." - The history of passive obedience, pp. [3-4.]

(2) Echard, Op. cit. p. 24.

political theories of the Whigs : in the two last parliaments of Charles II they had been the stronger party".^①

Nevertheless, whatever opinions may have been held by the minority of political thinkers, it is clear that the political theory which was dominant before the Revolution was the doctrine of non-resistance. The conception of the constitution which followed from that doctrine as a corollary was as follows. Sovereignty was held to reside solely in the king.^② The Houses of Parliament formed an essential but subordinate part of the legislature. The power of the Houses was not co-ordinate with that of the king in law-making. The king possessed the whole executive power, and all commands of the king had to be obeyed. If the commands were legal, they had to be obeyed actively. If they were illegal, they had to be obeyed passively; that is, a man, who could not conscientiously obey a law which he regarded as illegal, must suffer the penalties of law patiently for his disobedience. On no account whatsoever could

(1) History of England (Eng. ed. 1875), iv, p. 393.

(2) See Appendix I, Note 13.

active resistance be countenanced.

CHAPTER TWO
THE DOCTRINE OF RESISTANCE

CHAPTER TWO THE DOCTRINE OF RESISTANCE

I : Popular origin and basis of government

No punitive action taken against James II could be justified as long as the doctrine of non-resistance obtained. God, according to that doctrine, placed a king over the people, and the king's power came from God and not from the people, so that the only punishment which could be meted out to an unjust king was God's judgment. To justify the Revolution, that doctrine had to be overthrown.^① For the divine right of kingship, a popular origin had to be substituted and the power of government made to rest directly and not only indirectly on a popular basis.^②

(1) or modified, according to the conquest school. See below, chap. 4. sect. 1.

(2) Opponents of this doctrine held that the power might be from the people, but that that power was given to the ruler by God. The ruler was thus responsible to the direct and not to the indirect donor.

In addition, it had to be shown that a people could never be under perpetual subjection to a ruler without having an inherent right to recall, or remedy defects in, governmental power when it should be abused or employed contrary to the public good. The foundation of the doctrine of resistance, therefore, was generally^① held to be the popular origin of government.

It was freely admitted that government in the abstract was a divine institution.^② God made man such a creature as to dispose him naturally for political society.^③ But no one form of government could be said to have

(1) Some resistance doctrinaires denied popular sovereignty.

(2) Ferguson, A brief justification, etc. (1688). S.T.Wm.III, i, p. 135. See Appendix I, Note 14.

Four questions debated (1688). S.T.Wm.III, i, p. 165.

Hoadly, A sermon preach'd before the ... Lord Mayor ... Sept. 29, 1705, in Works, ii, pp. 18-25.

Hoadly, Some considerations ... offered to the ... Bishop of Exeter (1709), p. 4. See Appendix I, Note 15.

A letter to a friend occasion'd by the contest between the Bishop of Exeter and Mr. Hoadly (1709), pp. 3-4. See Appendix I, Note 16.

The criterion, or touchstone, etc. (1710), pp. 5-6. See Appendix I, Note 17.

(3) The criterion, or touchstone, etc., p. 5.

special divine sanction, and it was left to each nation to choose the form which suited its own needs.^① Supreme power in a state was not given to the ruler by a direct grant from God, nor was power based on natural right. These conclusions, applied to monarchy, meant that the divine right of kings and the patriarchal basis^② (though not necessarily origin) of kingship were both denied. The

(1) Masters, Case of allegiance considered (1689), S.T.Wm.III, i, p. 319.

"The ordinance of government is from God and nature, but the species of it, whether by one or more, is from men" - A resolution of certain queries concerning submission to the government. S.T.Wm.III, i, p. 443.

The speech of ... Thomas Earl of Stamford ... at the ... Quarter Sessions ... 1691. (1691) S.T.Wm.III, ii, p. 190.

Tindal, An essay concerning obedience to the supreme power, etc. (1694). S.T.Wm.III, ii, p. 432.

Blackall, The subject's duty (1704), in Works, ii, p. 1128.

Swift, Sentiments of a Church of England man (1708), in Works, iii, p. 65.

Even Sacheverell admitted this truth. See below, p.157.

(2) Locke admitted the patriarchal origin but not the basis of patriarchal government. See below, p. 56, and Appendix I, Note 18.

doctrine of non-resistance was based on the theory of the divine right of kings and supported by a literal interpretation of Paul's words in his Epistle to the Romans.^① That provided the strongest theological argument against resistance. But, since opponents of absolute monarchy had appealed to natural law, Filmer had built absolutism on a natural basis, viz. the patriarchal. Leslie, who was the most reactionary writer on the side of royal absolutism after the Revolution, belonged to this school of thought. His Rehearsal was largely taken up with ^adreary exposition of the patriarchal origin and basis of kingship.^② Many other writers used the same argument.

Both the divine right theory and the patriarchal put a moral obligation on obedience to the supreme power. Resistance implied a breach of the ordinance of God in both cases; in the patriarchal, in particular, a breach of the

(1) Rom. xiii, 1-5.

(2) Hoadly wrote a work of 200 pages against Leslie's patriarchal scheme. See The original and institution of civil government discussed, in Works, ii, pp. 182-286.

commandment 'Honour thy father'. To these two criteria, Bishop Berkeley added a third - obedience by the law of nature. Just as a breach of the commandments 'Thou shalt not steal', 'thou shalt not commit adultery' was vice or sin, so 'Thou shalt not resist the supreme power' was "a rule or law of nature, the least breach whereof hath the inherent stain of moral turpitude".^①

According to the patriarchal theory, there was no time when people were out of subjection to some form of government. Before there was any political society, men were subject to the father of the family. The father became the king. The opponents of this scheme argued that there was a fundamental difference between the power of the father and the power of the political ruler. Writers like Hooker and Sir William Temple were nearer the truth historically when they recognised a gradual evolution of the king out of the father of the tribe who gained pre-eminence by a combination of blood-relationship and power to lead in war. It would

(1) Berkeley, Passive obedience, etc. (1712) in Works, ed. A.C.Fraser (1901), iv. p. 111.

be impossible to say at what time a leader's authority passed from the patriarchal to the political. During the process, the subordinate members of the society were in subjection.

Although authors like Locke and Hoadly argued that the power of the father was never absolute, and consequently the power of the king could never be absolute, even if the patriarchal origin of kingship were admitted; yet they based government on the assumption that the father of a family could never become a king over his kinsmen without their own consent.^①

The father of the tribe might become a king, but his authority could not be more than paternal without the consent of the tribe, for when political government is instituted, the people have the right to choose what form of government they wish, and it may not be monarchy.

(1) Locke, Second Treatise, §§ 105-106. See Appendix I, Note 18.

Hoadly, Some considerations, etc. (1709), in Works, ii, p. 133.

There was a time, it was therefore assumed,^① when men lived in a non-political society. Men could not be brought under the subjection of a political ruler without their own consent, for men were born free. In this non-political society, men were also born equal,^② and the right to power which any man had was shared by all the others. Power did not constitute right and the law of reason teaches us that no one ought to be injured in his life, health, liberty or possessions.^③ If a man violates this law, the rest of mankind has, by the same law, a right

(1) Filmer "indeed, believed that there was irrefragable evidence that his state of nature was a historical fact; while Locke and Hobbes were content to urge on a priori grounds that theirs must have existed, although there was no evidence to show it" - Figgis, Divine right of kings. 2nd ed., pp. 158-9.

(2) Locke, Second Treatise, § 4.

Cf. "All men are equal in a state of nature" - Speech of Thomas Earl of Stamford at the Quarter Sessions, 1691. S.T.Wm.III, ii, p. 190.

Hoadly, Some considerations, etc. (1709) in Works, ii, p. 133.

Equality was economic, social or intellectual. It is equality "which all men are in in respect of jurisdiction or dominion one over another" - Locke, op. cit., § 54.

(3) Locke, op. cit., § 6.

to restrain or punish him, for he makes himself a menace to the society in which he lives.^① It was necessary for Locke and other writers on his side to argue thus, for opponents of the popular origin of government asked how it was that the people could give the magistrate the power of life and death, since they did not possess such a power in the state of nature, and since God alone could give such power.^② Bishop Blackall, for example, maintained that governmental power must come only from God, for, that the king could not have it from the people is evident "because it is such a power as the people never had, nor could have: and what they have not themselves, they cannot give to another".^③

(1) Locke, op. cit., § 8.
Hoadly, Some considerations, etc. (1709)
in Works, ii, p. 130.
See Appendix I, Note 19.

(2) Cf. Pufendorf. See Appendix I, Note 20.

(3) The divine institution of magistracy, etc.
(1708) in Works, ii, p. 1164. See also. Appendix
I, Note 21.

Locke and his followers, therefore, maintained that all the power which the magistrate exercised was a power inherent in the community and was derived solely from it.^① Thus all authority that is essential to political government is possessed by each individual in the state of nature. Each has the right to such power, and each has the right to judge when he is injured. In a state of nature, the law of nature provides rules whereby a just equilibrium should be maintained between right and power.^② But selfishness and ignorance often

(1) "All power is originally or fundamentally in the people" - A letter to a friend ... how to free the nation from slavery for ever (Jan., 1688/9), Som. T., x, p. 196.

"All government proceeds from the people" - Political aphorisms. S.T.Wm.III, i, p. 390.

Reflections upon the late great Revolution, etc. S.T.Wm.III, i, p. 255.

A vindication of the proceedings of the late Parliament of England, etc. Som. T., x, p. 262.

Johnson, An argument proving, etc. in Works (1710), p. 276. See Appendix I, Note 22.

Defoe, Original power, etc. (1701) in Works (1703), i, pp. 138-9.

Toland, Anglia libera, etc. (1701), p. 115.

Toland, Memorial of the State of England (1705), p. 76.

(2) On the binding obligation of the law of nature, see Gierke, op. cit., pp. 97 et seq.

prevailed over reason; and when the laws of nature were not observed, the state of nature (which was one of peace^①) gave way to a state of war. This was an inconvenience which could be remedied only by the institution of political society.^② Political society, therefore, was deliberately devised by men who thus subjected themselves to government of their own free-will; and the sole end of its institution was to secure to each man the due

(1) Hobbes' state of nature was a state of war. His conception of natural law, says Gierke, "was no law at all: it only sailed under the name of law like a ship under false colours, to conceal the bare piratical idea of power" - op. cit., p. 97.

(2) Wynne, The case of the oaths stated (1689), S.T.Wm.III, i, pp. 340-341.

Locke, Second Treatise, § 13.

Tyrrell, A brief disquisition of the law of nature (1692), p. 31.

Johnson, Notes on the phoenix edition of the Pastoral letter (1694) in Works (1710), p. 306. His inspiration was not Locke, for he says: "I speak the language of Fortescue".

Hoadly, Considerations humbly offered to the Bishop of Exeter (1709) in Works, ii, p. 135.

The criterion, or touchstone, etc. (1710), pp. 5-6.

See also Appendix I, Notes 23 and 24..

observance of natural law.^① The transference of power from the people to the magistrate may be effected by an original contract. The institution of government by way of contract is not always described in detail, as it is by Locke, but even when it is not mentioned at all, it is often, though not necessarily, implied by the conditional nature of government required for any scheme of government allowing a right of resistance in the people. Since, as we have indicated, Locke was the only writer who discussed the contract in detail, our next section will be mainly concerned with an exposition of Locke's theory.

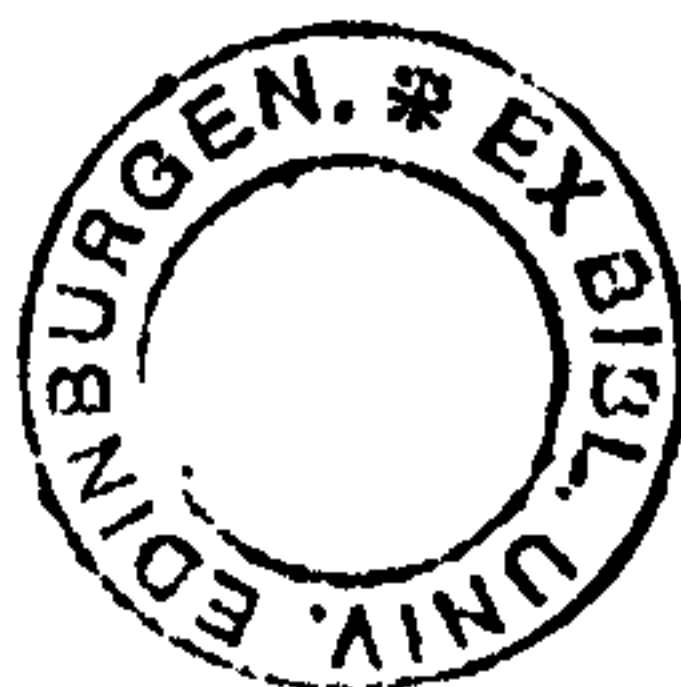
(1) "The obligations of the law of nature cease not in society, but only in many cases are drawn closer, and have, by human laws, known penalties annexed to them to enforce their observation. Thus the law of nature stands as an eternal rule to all men, legislators as well as others." - Locke, Second Treatise, §135.



II : The original contract.^①

When Somers introduced the idea of contract into the resolution of the Convention on January 28, 1689, he was propounding no novel explanation of the basis of government. The concept is a very old one. It can be traced back to the Old Testament period ; and it is found exerting its influence on political thought through the Greek Sophists and mediaeval thinkers down to modern times. Its chief importance, however, dates from the sixteenth century. The contract theory was employed to explain the human origin of governmental power in opposition to the divine right theory. It was used by Jesuits on behalf of the universal sovereignty of the papacy against the claims of the divinity of kings and their independence of the papacy. It was used by non-papal writers to support, on a secular basis, either an absolutist or a popular government free from papal control. Although the contract theory is usually associated with

(1) See D.G.Ritchie, Contributions to the history of the social contract theory in Political Science Quarterly, vol. vi (1891), pp.656-676.



writers on the side of popular government, it was not confined to them. The only common element in the theory was the human origin of government and the transference of power from the people to the government by way of contract. Once the power has been transferred, the contractual relationship between people and magistrate may vary in an infinite number of ways.^① The transference may be absolute, in which case the people can never rebel against their rulers. It may be conditional, in which case the government is regarded as a trustee and may be resisted if it breaks the original contract. In both cases there is one original pact which fixes the relationship between governor and governed. Apart from this original contract, there is found a type in a state of flux whereby rights may be taken from or given to the government from time to time.

Without respect to the consequences of the contract, we may distinguish two main types.

(1) Cf. Gierke, *op. cit.*, *passim*.

The first type was a contract entered into by individuals among themselves, the government-organ being the creation of the contract. The second type was one entered into by the whole people and a ruler, that is, between the governed and the governor. These two types were often combined.

Writers after the Revolution, when dealing with contract, made very sparing references to previous thinkers. Locke must have drawn his inspiration from many writers. But apart from Filmer whom he attacks, Hooker is the only thinker that he quotes from freely in his Second Treatise. Barclay is the only other writer mentioned by him. At the end of the Treatise he quotes Barclay because he finds a passage in his writings which he hopes will condemn the absolutists out of their own mouths. We have found no references to Althusius or to Spinoza^① in pamphlets of our period. Grotius, by the use made of him, would

(1) See Appendix I, Note 25.

seem to have been the chief inspiration of theorists who endeavoured to justify the Revolution. Hobbes is occasionally mentioned, but only with disapproval. Hooker, perhaps through the influence of Locke, did receive some attention. His staunch Anglicanism made him a persona grata with the Tories. And it was natural that the Whigs should appeal to a thinker whom the Tories were bound to listen to with respect. For the same reason, James I was cited in defence of the contract theory, although it is obvious to us that James's interpretation was not in keeping with the spirit of the Revolution. The doctrine of non-resistance, which had drawn much of its inspiration from the teaching of James, had decidedly condemned the contract theory. It had been condemned by Sanderson^① and by the Decrees of Oxford in 1683. It is safe to say that the contract theory was out of countenance in 1689 and

(1) Cf. 'above, p.27.

there is much acute observation in the remark of a pamphleteer who said that the inclusion of it in the resolution was "a popular flourish."^① Though we shall refer later to the Convention's interpretation of contract,^② we may note here that, in view of the previous condemnation of the theory, its inclusion was a direct challenge to the non-resistance theorists and calculated deliberately to divert political thought into new channels.

It was not essential to their argument that the original contract theorists should believe that at some given time in the past there was a state of nature without civil government of any sort. T.H.Green, on the assumption that such a position is material for Locke's argument, argues that men could not have formed political society, as Locke says they did, unless they had been living in a society which

(1) The desertion discuss'd, in a letter to a country gentleman. [Probably by Jeremy Collier.] (1689) S.T.Wm.III, i, p.110.

(2) See below, chap. 5, sect. 3.

was to all intents and purposes political.^① But, although Locke began his Treatise by building a body politic out of a non-political society, he virtually abandoned this thesis later.^② Hooker, in his Ecclesiastical Polity, had visualised a people making a compact because they felt impelled to change the tyranny of one man for a government founded on mutual compact,^③ and Locke followed Hooker closely in his Second Treatise. The essential quality of the contract theory is that the institution of government is based on the mutual consent of all the individuals who thus deliberately put themselves under civil authority.

(1) T.H.Green, Lectures on the principles of political obligation. (1911 ed.) p.72.

Cf. Sanderson's reasoning, above, p.27.

Cf. also Leslie, who wrote : "And if mankind were in such a state of nature they coul'd no more produce government from the consent of every individual, than the chaos, by its own natural force, cou'd have produced this world, by a fortuitous concourse of atoms." - Rehearsal, No.38. (1705).

(2) Cf. above, p.42 and see Appendix I, Note 18.

(3) Eccles. Pol., I,x,5. Quoted by Locke, Second Treatise, §§94 and 111.

Men, said Locke, agree with one another

"to join and unite into a community for their comfortable, safe and peaceable living, one amongst another, in a secure enjoyment of their properties...When any number of men have so consented to make one community or government, they are thereby presently incorporated, and make one body politic, wherein the majority have the right to act and conclude the rest." ①

This was the pactum unionis. According to Hobbes, this pact created the sovereign to which the people transferred their powers irrevocably, and the dissolution of the government, therefore, meant the dissolution of the political society. There was thus only one pact in Hobbes' theory. It is not so clear, however, whether there was one or more than one pact in Locke's thesis. In the passage quoted above Locke tells us that the people are formed into a body politic before the majority choose the form of government. It might be inferred that there is a second pact - a pactum subjectionis - between the government and this majority. A consideration of the

(1) Locke, Second Treatise, § 95.
Cf. also Appendix I, Note 24.

effect of the dissolution of the government, however, will show that Locke did not conceive such a secondary pact.

It has been said that "Locke's chief difference from Hobbes lies in his insisting that the dissolution of a government is not the same as the dissolution of society."^① It is true that Locke says we must distinguish between the dissolution of society and the dissolution of government. "The usual, and almost only way whereby this union is dissolved, is the inroad of foreign force making a conquest over them."^② But the vital words in the passage from which this quotation is taken are : "Where the society is dissolved, the government cannot remain." We cannot logically deduce from this statement that where the government is dissolved the society cannot remain. The real meaning of this passage seems to be that conquest alone deprives a people from

(1) Ritchie, Darwin and Hegel, p.219.

(2) Second Treatise, §211. Cited by Ritchie.

exercising its inherent right and power to determine its own form of government. A conquered people is reduced to an aggregate of individuals, each individual being by force subjected to a foreign jurisdiction. The power "to incorporate and act as one body, and so be one distinct commonwealth"^① is taken from them. Locke was endeavouring to show that resistance by the people against their government for breach of contract need not have the anarchic consequences which follow from the "conquerors' swords" which "mangle societies to pieces."^② Nevertheless we believe that according to Locke's scheme any dissolution of government must involve the dissolution of political society.

Even if society does not lose its cohesion and its sense of corporate unity when the government is dissolved, is there any body which can act in the name of the people and form one

(1) Second Treatise, § 211.

(2) Ibid.

party in a pactum subjectionis with a new government ? We have already suggested that one might be inferred. But Locke definitely states that the pactum unionis is "all the compact that is, or needs be, between the individuals that enter into or make up a commonwealth."^① In the next place, he says that the dissolution of government puts men back into a state of nature. He states this both explicitly and implicitly. A man "can never be again in the liberty of the state of nature, unless by any calamity the government he was under comes to be dissolved."^②

"It is in their legislative [i.e. their government] that the members of a commonwealth are united and combined together into one coherent living body...and therefore when the legislative is broken, or dissolved, dissolution and death follows. For the essence and union of the society consisting in having one will, the legislative, when once established by the majority, has the declaring and, as it were, keeping of that will."^③

When the legislative is dissolved, the people

(1) Second Treatise, §99.

(2) Ibid., §121.

(3) Ibid., §212.

"come again to be out of subjection and may constitute to themselves a new legislative, as they think best...Every one is at the disposal of his own will."^① This last sentence means that the dissolution of government puts men back into a state of nature, for it is only in that state that men have the disposal of their own wills.^②

We shall see that it is only when the constitution has been altered by the government itself that the people have the right to rebel. And it is in this connection that a proper understanding of the effect of the dissolution of government on society becomes so exceedingly important, for the effect determines whether resistance is to come from individuals or from some authorised represen-

(1) Second Treatise, §212.

(2) Tindal, Locke's disciple, took this view. Cf. his Essay concerning obedience to the supreme powers and the duty of subjects in all revolutions. (1694) S.T.Wm.III, ii, pp.431-461. For a Tory interpretation, see Leslie's Rehearsal, No. 38 (1705). He understood Locke to say that when government is dissolved, "the people are restor'd to their original state of nature."

tative body. Since resistance can be exercised only after the government is dissolved, and since this dissolution involves the dissolution of society, it follows that resistance can come only from individuals. This fact is further brought out by a consideration of the causes of a dissolution.

Before we can ascertain, says Locke, whether a legislative is dissolved or not, we must know the form of government so that we may "know at whose door to lay" the blame for misuse of power.

"Let us suppose, then, the legislative placed in the concurrence of three distinct persons :- First, a single hereditary person, having the constant, supreme, executive power, and with it the power of convoking and dissolving the other two within certain periods of time. Secondly, an assembly of hereditary nobility. Thirdly, an assembly of representatives chosen, pro tempore, by the people." ①

Locke gives five ways in which the constitution may be altered :- (1) If the prince sets himself above the laws. ② (2) If he hinders the

(1) Second Treatise, §213.

(2) On this topic, see below chap. 5, sect. 2.

meeting of parliament. (3) If he interferes with elections. (4) If he or parliament subject the nation to a foreign power. (5) If the prince neglects his post so that law cannot be administered.^① A dissolution, therefore, can be effected only by the king. In each of the five cases he must be responsible, and only in one case may he have a partner in his guilt.

"The other parts of the legislative [the two Houses]...can never, in opposition to him, or without his concurrence, alter the legislative by law, his consent being necessary to give any of their decrees that sanction. But yet so far as the other parts of the legislative any way contribute to any attempt upon the government, and do either promote or not, what lies in them, hinder such designs, they are guilty."^②

The effect which this passage has on the sovereignty of parliament will be considered later. What concerns us here is the fact that the government cannot be dissolved without the action of the king. When the dissolution occurs, the king must be responsible, Locke does not specifically mention

(1) Second Treatise, §§ 214-219.

(2) Ibid., § 218.

resistance to the king but he necessarily infers it, and the references to James II are too obvious to require comment. Resistance must come from individuals. Locke does not provide any constituent body which may resist the king in attempts to dissolve the government. Of the five ways given above in which the government may be dissolved, four are executive acts. Only in the fourth can the two Houses participate in its destruction. Even in that case they are guilty only of abetting the king and the final responsibility rests with him. When we come to consider parliament, we shall see that political theorists could not evolve a constitutional plan whereby the king could be controlled. The only remedy against unconstitutional acts of the king was popular resistance. It is clear that Locke did not worry about whether the five cases followed necessarily and logically for his scheme of contractual government. It is obvious that he selected the five main charges against James and, taking these particular cases he general-

ised about them. He was thus able to justify the claim made at the Revolution that the government had been dissolved by the king by his breaking of the original contract.

This was in keeping with a considerable body of opinion at the Revolution. The conclusion drawn from the theory of the dissolution of the government by the king was that when the constitution is altered the people have a right to resist those responsible for this state of affairs. Since the government is technically dissolved, the people may set up a new government as they think fit.^① This

(1) A letter to a friend...how to free the nation from slavery for ever. (Jan., 1689) Som. T., x, p. 195. See Appendix I, Note 26. Good advice before it be too late.

Som. T., x, pp. 199, 201.

A word to the wise for settling the government. S.T.Wm.III, i, p. 277. See Appendix I, Note 27.

Locke, Second Treatise, § 222. See Appendix I, Note 28.

A debate upon the query, etc. S.T.Wm.III, i, p. 234.

Swift, Sentiments of a Church of England man. (1708) in Works, iii, p. 71. See Appendix I, Note 29.

Defoe, A speech without doors. (1710) p. 12.

theory applied to the English constitution as early as January, 1689, was as follows:-

"All power is...formally in the parliament, which is one corporation made up of three constituent parts, king, lords, and commons ; so it was with us in England. When this corporation is broken, when any one essential part is lost or gone, there is a dissolution of the corporation. The formal seat of that power devolves on the people. When it is impossible to have a parliament, the power returns to them with whom it was originally. Is it possible to have a parliament ? It is not possible. The government, therefore, is dissolved." ⁽¹⁾

(1) A letter to a friend...how to free the nation from slavery for ever. Som. T., x, p. 196.

III : The sovereignty of the people.

In the first section of this chapter we considered the origin of government; in the second section we considered the formation and dissolution of government. This section will deal with the permanent foundation of government, namely, the sovereignty of the people, which has, as a corollary, the right of resistance.

A right of resistance does not necessarily follow from the popular origin of government.^① The power might come originally from the people, but if the power was alienated irrevocably, then no resistance could be justified. Adherents to the doctrine of resistance, therefore, made the people perpetual sovereign. All power was held to be fundamentally in the people, but formally

(1) A letter to a friend occasion'd by the contest between the Bishop of Exeter and Mr Hoadly. (1709) pp.1-2. See Appendix I, note 30.

in the government.^①

"There is a supreme power in every community essential to it and inseparable from it...which when the safety and peace of the publick necessarily requires it, can supply the defects and re-establish the true fundamentals of the government, by purging, refining and bringing things back to their first original."^②

This supreme power in the community is to be distinguished from the Tory conception of a supreme power in a state. It is not a legally constituted authority but a power founded on the law of nature which the people inherently possess. It is a power to be used only in an emergency.

"There can be but one supreme power," said Locke, "which is the legislative...yet the legislative being only a fiduciary power to act for certain ends, there remains still in the people a supreme power to remove or alter the legislative, when they find the legislative act contrary to the

(1) A letter to a friend, etc. (1689) Som. T., x, p. 196.

Swift, A discourse of the contests and dissentions, etc. (1701) ~~in Werke, 1,~~
See Appendix I, Note 31.

(2) Some short considerations relating to the settling of the government, etc. S.T.Wm.III, 1, pp. 175-176.

trust reposed in them...And thus the community perpetually retains a supreme power of saving themselves from the attempts and designs of anybody, even of their legislators, whenever they shall be so foolish or so wicked as to lay and carry on designs against the liberties of the subject...The community may be said in this respect to be always the supreme power, but not as considered under any form of government, because this power of the people can never take place till the government be dissolved."^①

Government was thus regarded as a trustee. It was a common assertion in pamphlets that the government was a trustee for the exercise of the people's sovereignty. Opponents of this position argued that resistance did not logically follow. "When I trust a man with my life, or fortune, all men agree that I put it in his power to deprive me of both: for to deliver any property to another, with a power of revocation is to trust him (as we say) no further than we can see him."^② A favourite argument

(1) Second Treatise, § 149.

(2) Vindiciae juris regni, p. 6. Cited in Tyrrell, Bibliotheca politica, p. 109.

against this view was that when a man puts himself into the hands of a physician, he still retains the right to judge whether he is being given poison or a purge.^①

Hoadly, as we shall see, was regarded as the chief exponent of the doctrine of resistance in Anne's reign. He was an unsystematic thinker and he borrowed largely from Locke without digesting his material. He accepted the original contract, but he did not make it the foundation of his political thought. He based his theory on the trusteeship of government, and arguing on that basis he did not trouble to be precise on either the sovereignty of the people or the sovereignty of a government. He did not make it clear whether he regarded the people's supervision of civil authority as supervision of power which they had delegated. Hoadly confused the issue by the emphasis which he laid on the words of Paul that the king was God's minister. 'for good'.^② He made the king responsible to the

(1) Tyrrell, Bibliotheca politica, p. 113.
Swift, Sentiments, etc. (1708) in Works, iii, p. 70.

(2) Cf. below, p. 141.

people for a breach of trusteeship to God. If the king failed to be the minister of God for good, he forfeited God's protection and the people were justified in rebelling against him. This was the mediaeval theory that when a king degenerates into a tyrant he may be resisted, although his regal authority was from God and not from the people. Hoadly was not primarily concerned with where the king's power came from. He was satisfied that the fundamental law of nature was self-preservation, and that this right must take precedence over all others. There can be no higher law than this. "It is stupid nonsense," he said, "to say that any resistance is lawful to what is called the supreme civil power."^① There cannot be a supreme over a supreme. An officer is only superior in so far as his commission allows him. Outside that he is no greater than anybody else. "So that the right of self-defence remains in private men as much against one, who is in some respects

(1) Original and institution of civil government, etc. (1710) in Works, ii, p. 203.

a superior, as against one who is in some respects an inferior : how much more in the whole body politic, against all attempts to ruin it, tho' coming from those, who are, in other respects, superior to it, viz. as far as their commission, founded upon the will of God, makes them so ? Now to argue from any person's being, by title, supreme, against equality in any respect, is to abuse the reader with words." Hoadly continued : "This is the thing to be proved, that the title supreme or superior to all, given to any governor, signifies any more than a superiority, as far as the ends of his office require it." It does not make a servant his master's master or subjects rulers to allow them a right to judge of the commands of their ruler and to refuse obedience to those which they themselves judge to be unlawful.^①

Though Locke and Hoadly differed in details and the emphasis they laid on certain points,

(1) Ibid., pp. 203-204.

they were agreed on the fiduciary character of government, involving resistance to the government if the trust is abused. We have seen that according to Locke's theory resistance must come from individuals. Hoadly took the same view.^① But most writers, when they claimed the right of the people to resist, did not define what they meant by 'people'.^② Some implied that the individual, acting in his private capacity, had the right to resist.^③ Others implied that resistance could come only from inferior magistrates or the injured part of the constitution.^④

The right of the people to judge when they were injured was severely criticised by the advocates of non-resistance. Bishop

(1) Resistance at the Revolution, said Hoadly, was by men acting "in their private capacity." - Some considerations humbly offered to the... Bishop of Exeter. (1709) in Works, ii, p.137.

(2) For Defoe's definition, see Appendix I, Note 32.

(3) "Who shall be judge of the actions of sovereigns?" asked a pamphleteer. He replied that it was each person individually. See The criterion, or touchstone, etc. (1710) p. 11.

(4) See Appendix I, Note 33.

Berkeley said :

"Since the prospects men form to themselves of a country's public good are commonly as various as its landscapes, which meet the eye in several situations: it clearly follows, that to make the public good the rule of obedience is, in effect, not to establish any determinate, agreed, common measure of loyalty, but to leave every subject to the guidance of his own particular mutable fancy." ^①

This was the bugbear raised by all non-resistance theorists. To a certain extent they were justified, but they falsified the Whig position by accusing the resistance theorists of leaving the determination of when resistance should take place to the capricious will of the people.^② It is true that writers like Defoe and Hoadly often laid down in a single work the bare rule that self-defence justifies resistance. But, when their philosophy is

(1) Passive obedience, etc. (1712) in Works (ed. A.C.Fraser), iv, p. 114.

Cf. Leslie, attacking the thesis that individuals have the right to judge of injury, said : "This means that you have power and authority to serve the queen as you served her father and grandfather. But you will say that is only if she does the like as they did. And I say to you, that you make yourself judge of that." - The good old cause further discussed. (1710) p. 14.

(2) See more fully below, chap. 3, sect. 2. (The Sacheverell Trial) and Appendix I, Note 53.

gathered from all their writings, it will be found that 'governing for the common good' means governing by law, and 'self-defence'^① means resistance to persistent arbitrary rule. The resistance theorists made it clear that resistance to legal government could not be justified.^② Nor could resistance to isolated cases of arbitrary rule be justified. Arbitrary rule must be so persistent as to constitute a new, and therefore illegal, form of government. Although Locke defined political power as a power at the utmost bounds limited to the public good,^③ he did not allow a right in the people to resist on the doubtful grounds that the government had overstepped its commission. He made it clear that

(1) One of Hoadly's definitions of self-defence is as follows : "Self-defence is not a pretence to a government over those against whom it defends itself : but only to the right of preserving itself, and its privileges, against those who have no right to invade, or destroy them." - The original and institution of civil government, etc. (1710) in Works, ii, p. 204.

(2) See below, p.294.

(3) Second Treatise, §§ 3 and 135.

the dormant sovereignty of the people could never be exercised as long as the government subsisted.⁽¹⁾ Resistance to James II was always justified on the grounds that he had dissolved the government first and thus absolved his subjects from their oath of allegiance before they resisted him. It would be impossible to speak of legal resistance. But all resistance must be non-illegal. Thus resistance may begin only when the law ceases.

Although the right of resistance was thus hedged about with these limitations, which to a certain extent answered the Tory charges that the doctrine was anarchic, nevertheless these limitations could not be so clearly defined as to give an unmistakable guide as to when the doctrine should be put into operation. To what lengths exactly had the king to go towards irresponsible arbitrary rule before obedience should give way to rebellion? The test was the dissolution of government. But how were the people to know that the government was

(1) Second Treatise, §§ 149 and 243.

dissolved ? If the nation were reduced to a state of anarchy, it would be apparent to everybody that the government was overthrown. It is certain that Locke and other writers of his way of thinking regarded resistance as the legitimate method of preventing this state of affairs. It was the boast of the Whigs that nothing was altered by them at the Revolution and that the constitution was merely preserved from destruction.⁽¹⁾ The charge against James II was not that he had destroyed the constitution but that he had endeavoured to subvert it. If government had totally disappeared, there would have been nothing for the people to resist. Locke had the facts of the Revolution clearly in his mind. By dissolution of government he did not mean the total abolition of all authority but the alteration of the frame of government which was a technical dissolution. The government remained, but it was not the same government

(1) Jekyll at the Sacheverell Trial. See Appendix I, Note 34.

as the people had set up when the original contract was made. And for that reason the people may act as if they were in a state of nature and may use force to bring the government back to its original form. Not only the alteration, but the attempt to make the alteration may be resisted. The people have a right to preserve the institution which they have set up and "the state of mankind is not so miserable that they are not capable of using this remedy till it be too late to look for any."

"To tell a people they may provide for themselves by erecting a new legislative when, by oppression, artifice, or being delivered over to a foreign power, their old one is gone, is only to tell them they may expect relief when it is too late, and the evil is past cure. This is, in effect, no more than to bid them first be slaves, and then tell them to take care of their liberty, and, when their chains are on, tell them they may act like free men. This, if barely so, is rather mockery than relief, and men can never be secure from tyranny if there be no means to escape it till they are perfectly under it ; and, therefore, it is that they have not only a right to get out of it, but to prevent it." ①

(1) Second Treatise, §220.

This is one of the few passages in the Second Treatise where Locke ceases to be the philosopher and becomes the impassioned partisan of the Revolution. When he gave the five ways in which the government might be dissolved, and for which resistance alone could be justified, there was no obvious connection between them and tyranny. The five acts might be unconstitutional, that is, for Locke, contrary to the original contract, but they need not be tyrannical. But now in this passage Locke equates tyranny with dissolution of government. Although his dissolution of government might be difficult to perceive in practice, yet in theory it was a clear guide. But tyranny is an elastic term and a man's view of what constitutes tyranny might vary, as Berkeley said, like different men's conceptions of the same landscape. What was tyranny and what degree of tyranny justified resistance? The resistance doctrinaires could give no complete answer.^①

(1) Cf. the Whig case at the Sacheverell Trial, below, chap. 3, sect. 2, § 3, and Appendix I, Note 35.

The only safeguard they could offer against the anarchic tendency of the doctrine was that subjects would not rebel until there was such a pressing necessity that success was assured.⁽¹⁾ Spinoza had allowed resistance in one case only and that was where a rebellion was successful. Justice could be founded only on success. Rebels failing to upset the government or to establish a new one ought rightly to be treated as traitors. Spinoza was equating might with right. If a few, without right but by physical strength, upset the government, this, according to the Whigs, would constitute rebellion. They ought to be treated as traitors. If a few, with right on their side, failed and were punished, their punishment would be unjust. But the Whig inference was that if only a few rebelled then they could not have had right on their side. Success could only be assured and justified when the majority of the nation rebelled. The assumption was that a whole people would never rebel

(1) Chuse which you please, etc (1710) p.5.
See Appendix I, Note 36.

until it had right on its side. The recognition that the government is dissolved must be so universal as to be beyond doubt.

"He that appeals to Heaven," said Locke, "must be sure he has right on his side, and a right, too, that is worth the trouble and cost of the appeal, as he will answer at a tribunal that cannot be deceived, and will be sure to retribute to every one according to the mischiefs he hath created to his fellow-subjects - that is, any part of mankind." ^①

An anonymous writer in 1710, using the same argument, concluded his exposition of the doctrine of resistance with these words :

"This scheme then is so far from rendring the prince unsafe on his throne, that it has a direct tendency to the contrary, because he has his safety always in his own power ; he has nothing to do but to pursue the public good (the end for which he possesseth that post) and it is impossible for any rebellious attempts ever to succeed." ^②

(1) Second Treatise, §176.

(2) The criterion, or touchstone, etc., p. 12.

We have, in this chapter, attempted to outline the pure philosophy of the doctrine of resistance. Out of a heterogeneous mass of often conflicting evidence, we have endeavoured to extract what is most representative of all the advocates of the right of resistance. The full meaning of the doctrine and its implications can be understood only in relation to the actual political and constitutional events and problems of the Revolution and of the twenty-five years thereafter, usually known as the period of the Revolution Settlement. In the following chapters we shall deal with the history and application of the doctrine after 1689.

CHAPTER THREE

The history of the doctrines of resistance and non-resistance from 1688 to 1714.

Section I : 1688 - 1709.

CHAPTER THREE

Section I : 1688 - 1709

I : The Convention

James II, by his flight and by his throwing of the Great Seal into the Thames, showed plainly that he wished to bring all government to a standstill.⁽¹⁾ There was no formal act of abdication; for, indeed, King James had no intention of resigning his throne. Whatever James's intentions might be, however, one fact was clear, viz. that England could not long subsist without a government. In face of this crisis, the leading statesmen acted as they were bound to do, and, with the concurrence of William, summoned a Convention

(1) "I am very confident, if the king had not again withdrawn himself, the Peers would have sent to him before they had made any address to the Prince; but what can the most loyal and dutiful body in the world do, without a head."
- Lord Rochester to Lord Dartmouth, 25th. Dec., 1688. (Hist. MSS. Comm. Dartmouth MSS., vol. 3, 15th Rep., App., pt. 1., p. 141.)

See also, Appendix I, Note 37.

which duly met on January 22nd., 1688/9.

On January 28th., the lower house passed the following resolution (drawn up by Somers) :

"That King James the Second, having endeavoured to subvert the Constitution of the Kingdom, by breaking the original contract between king and people, and, by the advice of Jesuits and other wicked persons, having violated the fundamental laws, and having withdrawn himself out of this Kingdom, had abdicated the government, and that the throne is thereby vacant." ①

Without much debate, both houses accepted the position that James was no longer acting governor. The upper house wished at first to accept this position as final and held that in the absence of James, the administration should be undertaken by a regent. The regency plan, having been defeated by a narrow majority, ② the Lords came into line with the Commons

(1) Burnet had published by authority in December, 1688, An enquiry into the present state of affairs. He was not known as the author. A pamphleteer wrote : "The author of the Enquiry into the present state of affairs, etc., for whose judgment the Commons seem to have a very great regard, as appears from their concurrence with him: for their most considerable votes are, from his 11th. paragraph..." - The desertion discussed, etc. S.T.Wm.III, i, p. 110.

(2) By 51 to 49 votes. Journal of the House of Lords.

See Appendix I, Note 38.

who had resolved that James was no longer king. At first there was a difference between the houses over the appropriate term to apply to James's flight. The Commons chose 'abdication'; the Lords preferred to call it 'desertion'. There was more in the significance of the terms than was generally realised at the time. 'Desertion' did not carry with it the implication of guilt. A perfectly innocent man might run away when finding himself surrounded by enemies or lukewarm friends. But abdication implied that James had, by his mal-administration, been abdicated of his office of king.^①

The Lords, finding that the Commons were determined to retain their expression, concurred. The real divergence of opinion in the Convention was over the conclusion to be

(1) A committee of the lower house reported that it disagreed to the word 'deserted': "because the word 'deserted' does not express their meaning so fully, it importing no more than a 'removing' which is expressed by the word 'withdrawing' in the sentence before; therefore they conceive the word 'abdicated' a more proper word, importing 'a renouncing of the crown'" - Grey's Debates, ix, p. 49.

See Appendix I, Note 39.

drawn from the premiss that James had abdicated. The conclusion 'that the throne was thereby vacant' reached by the Commons^① was carried unanimously. But when the Lords proposed an amendment to it,^② there was a division in the lower house when the vote was taken whether or not the Lords' amendment should be accepted.^③

In the debates in the Commons, two interpretations of the vacancy were offered. Firstly, the throne might be vacant only as to James. Secondly, it might be vacant absolutely. The Lords accepted the former alternative. Dolben,

(1) House of Commons Journal, Jan. 28, 1688/9.

(2) On 31 Jan. the Lords voted by 52 to 47 votes that the throne was not vacant.

(3) The resolution to agree to the Lords' amendment was defeated on 5 Feb. by 282 to 151 votes. - Journal of the House of Commons: Grey's Debates, ix, p. 65. This shows the strengthening of the conservative party, for the resolution had passed in the negative on 2 Feb., nem. con. - Grey's Debates, ix, p. 49.

On 6 Feb. the Lords accepted the Commons' resolution that the throne was vacant by 65 to 45 votes. "Thus ended the first round of the Revolution struggle, apparently in a shattering defeat for Tory conviction." - Feiling, History of the Tory party, p. 254.

who spoke first in the Commons' debate, objected that the Lords were illogical in accepting the premiss that the throne was vacant and refusing to accept the conclusion that it was vacant absolutely. He said: "I tell you freely my opinion, that the king is demised, and that James the Second is not King of England."^① The emphasis which he laid on the word 'demise' implied no more than that the crown was vacant as to James only. Pollexfen pointed this out. He demurred at the word 'demise'. He believed that there was a difference between 'demise' and 'vacancy'. On the demise of James the crown would be full by succession.^② Sir Thomas Clarges accepted the first alternative, maintaining that to say that the throne was vacant meant that "we have power to fill it, and make it from a successive monarchy an elective."^③ Finch, too, was ranged on

(1) Grey's Debates, ix, p. 7.

(2) Ibid., pl. 20.

(3) Ibid., p. 15.
See also Appendix I, Note 40.

this side. The throne, he argued, was vacant as to James only, which meant that it was not now vacant at all. In point of fact 'demised', 'abdicated' and 'deserted' all meant the same thing, he said, viz. that James was no longer king. It meant nothing more. King James, by his mal-administration, could lose no more than his personal exercise of the government. He could not lose his inheritance.^① Sir Joseph Tredenham voiced his doubts: "I agree", he said, "that the throne is vacant; we have no such thing in our government as an interregnum,^② and so no entire vacancy."^③ Sir Robert Sawyer, too, maintained that "there is a great difference

(1) Grey's Debates, ix, p. 18.
Cf. Burke. Defending the Revolution, he wrote: "Though a king may abdicate for his own person, he cannot abdicate for the monarchy." - Reflections on the Revolution in France in Works, ii, p. 294.

(2) The fact, nevertheless, is that all indictments between 11 December and 13 February ran 'contra pacem regni' and not 'contra pacem domini regis'. This was noted by the author of A letter from a lawyer in the country, etc. Som. T., x, p. 177, and by Johnson, An argument proving, etc. in Works (1710), p. 268.

(3) Grey's Debates, ix, p. 50.

between the throne being vacant by abdication and dissolution of the government. The vacancy makes no dissolution of the government neither in our law, or in any other."^① He suggested that the relinquishing of the possession of the throne was sufficient to make an abdication. He implied that James had not thereby lost his inheritance.^②

There was considerable apprehension lest the Revolution should result in what one member called a 'Polish monarchy'. Complete vacancy, for many, implied election. To a certain extent, they were justified in this fear. It is true that the offering of the crown to William meant the electing of William. But that did not make the crown elective, provided that the throne was hereditary in the children of William and Mary. The single election, however, would in itself be a breach in the accepted rule of legal succession.^③

(1) Grey's Debates, ix, p. 21.

(2) Ibid., p. 22.

(3) Cf. Mackintosh, Vindiciæ Gallicæ. See Appendix I, Note 41.

Cf. also Appendix I, Note 71.

It is quite clear that, if the throne was vacant absolutely, there could be no hereditary successor to it. The throne could be filled only by election. But grant that the vacancy was relative only to James, then it follows that a hereditary successor to James would automatically fill the throne. This, of course, raised the question in the Convention: Did such a successor exist? There were supporters for both affirmative and negative answers.

Firstly, for the former it was argued that James could abdicate for himself only and could not prejudice the right of his heirs. "No act of King James", said Ettrick, "can destroy the succession of his heirs. If the throne be vacant, the allegiance is due of right where the succession belongs."⁽¹⁾ Clarges said: "By this vacancy, I understand only that the king has abdicated for himself, and divested himself of the right of government, and that the government comes to the next Protestant heir in succession (I explain myself) to the Princess

(1) Grey's Debates, ix, pp. 54-55.

of Orange."^① It will be noticed that Clarges limited his successor to one of the Protestant faith. Maynard gave it as his legal opinion that a papist was not incapable of occupying the throne.^② Clarges, of course, was trying to surmount the legal obstacle of the succession of the infant James. The young prince, however, was not a formidable barrier. He was generally held to be an impostor. On the other hand, Sir Richard Temple regarded the young prince as an insuperable barrier to the admission of an hereditary successor to James II. "You have a pretended brat beyone sea," he said, "whom you cannot set aside."^③ The existence of James, it must be admitted, presented no immediate difficulty. It did not require much stretching of the conscience to lay aside his legal claim. It must be noted, too, that those who argued for a legal successor were arguing for the principle, and were not advocates (as a rule) for any specific claimant. Usually, in fact, no claimant was mentioned. Sir Richard Temple thought, no doubt, that he had got home

(1) Grey's Debates, ix, p. 55.

(2) Ibid., p. 17.

(3) Ibid., p. 62.

a good thrust when he asked the house if there was a successor to James and if, therefore, the throne was full. "Is it full ? Then the Lords would have seen it and not put the government into other hands."^① To the unwary, this was a good dialectic thrust. But his query could not overthrow the contention for hereditary succession. The fact that the Lords had asked William to undertake a provisional government might and did, in fact, mean that while the identity of the heir was uncertain, some government was essential. It did not mean that no heir existed. "It does not matter whether we can name the heir or not, the heir must be there somewhere. So we can say the throne is full." "I think it sufficient to show that there are heirs who are to take the lineal succession, though we do not, or cannot positively name the particular person...It is sufficient to prevent the vacancy that there is an heir or successor,

(1) Grey's Debates, ix, p.61.

let him be whom you will." ^①

Secondly, Serjeant Maynard was of opinion that James could have no legal hereditary successor. When he spoke of the throne being vacant, he did not thereby mean that the throne was 'vacant in perpetuity'. Vacancy, nevertheless, implied more than vacancy as to James, not because James, by his abdication, could prejudice the right of his heirs, but because James had no heirs to prejudice. "Nemo est haeres viventis", he said. ^② Colonel Birch supported this plea. ^③

(1) Speech of Earl of Pembroke. Parl. Hist., v, 90.

(2) Grey's Debates, ix, p.57.

(3) Ibid., p.59. Cf. "If a king dies he hath a successor, and the right devolves on him; but the king lives he hath no successor." - Good advice before it be too late. Som.T., x, p.199.

Cf. also : "King James the Second being alive, to call it a demise of the king is a contradiction." The power is not in James, "nor is it in any other person: therefore it is in the power of the people to settle it. If any can say it is in any other person, let him assign that person, which he can't, because there can be no claim by descent during his life: for non est haeres viventis, there must be the death of the ancestor before the heir can claim any right." - Four questions debated. S.T.Wm.III, i, p.165.

The same argument was used by Ferguson in A brief justification, etc. S.T.Wm.III, i, p.145.

Cf. also Obedience due to the present king, etc. Som.T., x, p.298.

The fact is that Maynard was treating the kingship like a private inheritance. If James, by being alive, had no heir in law, then it followed that the kingship must still reside in James; or if James had lost his kingship, then it did not matter whether he had an heir or not, for then there was no inheritance for that heir to succeed to.^① Maynard, by clinging to the maxim 'non est haeres viventis', was tacitly admitting that James still retained the kingship. He had no intention of making any such admission. Nevertheless, he made kingship inseparable from the person

(1) Cf. "If it be said, non est haeres viventis, and so no regular descent, I answer, first, this rule relates not to the descent of the crown, but to private estates; for the descent of the crown is not, nor can be order'd in all things by the same rules as private patrimonies, seeing it is an estate join'd with an authority or office. Secondly, the sessor of a king from his government is really a demise, and will in law make a degree of descent. Thirdly, where a king in his lifetime resigns his government (and the same may be said in the case of abdication) his next heir thereupon succeeding may doubtless properly be said to inherit, that is, to take as heir, notwithstanding his ancestor be still in life: for he conveys a title to himself by heirship and without that he can have no more right to succeed than another man." - Some considerations touching succession and allegiance. S.T.Wm.III, 1. pp. 337-8.

of the king. Thus James would be de jure king, but, having abdicated, he could not exercise his kingship ; and, having no heir, he could not transmit that authority. Some other person had to found to exercise the functions of kingship. And the inference is that that person would be king only de facto. But if kingship was an office, James could be dead in his official capacity and have an official heir even if, being alive, he could not have a private heir.^① Finch expressed this view. "I hear it said 'nemo est haeres viventis'. There are civil deaths as well as natural. If the throne be vacant as to King James II, then he is civilly dead, or else it is in the power of any king, by his abdication, to destroy the succession."^② Finch was willing to allow that James had lost his personal right to rule. "By breaking the

(1) See below chap. 5.

(2) Grey's Debates, ix, p.61. Sir Robert Sawyer had taken the same view. "When he renounced the civil administration of the government, there is a civil death, as well as a natural ; though living, yet in effect dead." - Ibid., ix, p.57.

original contract with the people," he said, "he has made the throne void as to himself."^① But, by granting that James had an official heir to the throne, he restricted the power of the Convention to the mere declaration of who was by law heir. Maynard likewise admitted hereditary succession, but by his ingenious maxim, he left to the Convention the choice of the king. He, no doubt, saw the danger in admitting an heir in that it pointed to Mary as that heir and excluded William,^② although Burnet did not think the admission of an heir excluded him.^③

From the foregoing analysis of the debates in the Convention, it should be apparent that the members did not regard the events of the interregnum as rebellion. No right of resistance

(1) Grey's Debates, ix, p. 60.

(2) Clarges and Tredenham both pointed to Mary.

(3). Burnet wrote: "And if the king ceases to be a king, then the next heir becomes the only lawful and rightful king; and if the next is a femme covert, then by the law of nations, which creates a communication of all the rights of the wife to the husband, this is likewise communicated, so that here we may have still a lawful and rightful king." - An enquiry into the present state of affairs (1688). S.T.Wm.III, i, p. 131.

was claimed ; no right to depose a king was put forward.^① At the bare assertion on the part of the people to protect their constitution in church and state, the king had, of his own choice, elected to abdicate. The central thought of the members of the Convention is summed up in these words of Sir George Treby : "We have found the throne vacant...We found it so, we have not made it so."^②

(1) Cf. below, pp. 109-111.

(2) Grey's Debates, ix, p.13.

II : Repeal of the oaths against resistance, and the new oath of allegiance.

On March 25, 1689, when leave was asked to bring in a bill to take away the Oaths of Allegiance and Supremacy, Sir Thomas Clarges complained: "If the oath be taken away in the Corporation Act, 'that it is not lawful to resist the king' it implies you may resist him."^① If there was any reply to this observation, it has not been recorded; but if Clarges' remark did not fall on deaf ears, then we may assume that the bill, as ultimately passed, was open to the interpretation that it negatived the doctrine of non-resistance. But it is difficult to believe that the legislators intended to give a statutory sanction to the doctrine of resistance. While the Whigs believed that this was so,^②

(1) Grey's Debates, ix, p. 111.

(2) The repeal of the words referred to by Clarges was cited by Jekyll in the Sacheverell Trial to prove the contention that parliament after the Revolution renounced the doctrine of non-resistance. S.T., xv, 98.

William Paley also took this view. See Appendix I, Note 42.

there were many Tories who regarded the bill as in no way recognising the right of resistance.^① The bill was entitled the Oaths of Allegiance and Supremacy Act.^② The preamble recited the oaths of supremacy and allegiance as imposed by 1 Eliz. cap. I and 3 Jac. cap. 4. and the statute enacted: "That from henceforth no person whatsoever shall be obliged to take the said oaths or either of them, by force or virtue of the said statutes ... and the said others themselves shall be and are

(1) Harcourt, opposing the interpretation of Jekyll in the Sacheverell Trial, said: "I beseech your Lordships to consider, whether the repeal of this oath can have any weight with your Lordships. 'Twas a general assertion, to which all the peers and commons, in the employments I have mentioned, were to swear; there is no exception in the oath, but what is implied in it. Was not the proposition as true before it was sworn, as after? Was it therefore true because 'twas sworn, or was it sworn because 'twas true? Did the swearing it make it true, or the truth make it fit to be sworn? If it was true when it was sworn, the proposition was equally true before and since." - S.T., xv, 210.

(2) I Wm. & Mary, cap. 8. Printed (in part) in Dykes' Source book of constitutional history, pp; 103-5.

hereby repealed, utterly abrogated and made void."^① The oath 'That it is not lawful upon any pretence whatsoever to take arms against the king' in 13 & 14 Carl. II, cap. 3^② and in 13 & 14 Car. II, cap. 4^③ was repealed by section XI. The new oath was short and simply worded. It is :

"I, A.B., do sincerely promise and swear that I will be faithful and bear true allegiance to their Majesties King William and Queen Mary: so help me God."

There was also a second clause requiring the abjuration of the papal position that princes excommunicated by the pope may be deposed or

(1) The oath in I Eliz. cap. I, sec. ix is printed by Prothero, Select Statutes, p. 7. There is nothing in this oath which necessitated its repeal in 1689.

The oath in 3 Jac. I, cap. 4, sec. ix ('An act for the better discovering and repressing of popish recusants') is printed by Prothero, op. cit., p. 259. The oath contained the following expressions: "I, A.B., do truly and sincerely acknowledge...that our sovereign lord and king James is lawful and rightful king of this realm." The renunciation, in the oath, of the doctrine that kings "may be deposed or murdered by their subjects" referred only to a king excommunicated by the pope. It had no bearing on the question of resistance in 1688, and it was, in any case, incorporated in the new oath.

(2) One of the chief props of the doctrine of non-resistance. See above, p. 30.

(3) Another of the props. See above, p. 31.

murdered by their subjects. The doctrine of resistance had always been associated, in the minds of Stewart royalists, with this popish doctrine. It may have been the intention of Parliament, therefore, to allay the fears of those who might reject the doctrine of the right of resistance as the justification of the Revolution because of its popish association. But this is unlikely for reasons which we shall presently discuss.

It seems reasonable to suppose that the repeal of the words 'That it is not lawful to resist the king' was not intended to give a statutory right of resistance. It was merely a necessary part of the procedure in simplifying the oath of allegiance.^① An expression of opinion on whether it was or was not lawful to resist the king were better not to be required. As we shall see, the oath of allegiance was worded so that those who took it were not committed to any admission of the king's

(1) In the debates Sir Henry Capell said: "I would have no more oaths than are necessary to support the government." - Grey's Debates, ix, p. 111. Cf. below, p. 225.

right. The oath was to a de facto king and all controversial points were avoided.^①

In the Bill of Rights, section IX enacted :

"That all and every person and persons that is, are, or shall be, reconciled to, or hold communion with, the see or church of Rome, or shall profess the popish religion, or shall marry a papist, shall be excluded and be forever incapable to inherit, possess or enjoy the crown, and in all and every such case, or cases, the people of the realm shall be and are hereby absolved of their allegiance."^②

Bishop Burnet was the author of this 'diffidatio' clause. Speaking of the bill, he said: "A clause was inserted, disabling all papists from succeeding to the crown ... To this I proposed an additional clause, absolving the subjects, in that case, from their allegiance. This was seconded by the Earl of Shrewsbury: and it passed without any opposition or debate: which amazed us all, considering the importance of it."^③ This clause in

(1) This topic is treated at greater length, below, chap. 4, sect. 2.

(2) Dykes' Source book, p. 111.

It had been suggested in the Convention (see above; p.92) that a Roman Catholic king was incapable of holding the crown. Maynard, whose legal knowledge was not doubted, assured the house that this was not so. (Grey's Debates, ix, p. 17.) Dolben had supported Maynard. (Ibid., p. 28.)

(3) Burnet, Hist., iv, pp. 27-8.

the statute was frequently cited by the advocates of the doctrine of resistance. But it must be observed that it does not necessarily support that doctrine; for, its advocates were pleading for a general right outwith statutory right, whereas this clause was particular in its application and was specifically limited to allegiance to a Roman Catholic king. It might further be said that the enacting of a law legalising resistance in a special case negatived, by implication, any claim of right to resist in any other instance.⁽¹⁾ Nevertheless, the clause had its significance in so far as it negatived the theory of the divine right of kings on which the doctrine of non-resistance had been largely based. Only a single case of

(1) This was the view taken by Dodd, Sacheverell's counsel. It did not negative the doctrine of non-resistance, he said, although it was "the first and stated and determined exception to this general rule [i.e. non-resistance] that ever was made in any Act of Parliament." - S.T., xv, 220.

resistance had to be admitted to shatter the theory of indefeasible hereditary right. It was this theory which had defeated the Exclusion Bill in 1681. The exclusion of James from the succession, by reason of his religion, had not been admitted because a man's religion, it was said, could not be a bar to his legitimate inheritance to the crown to which he was entitled by divine hereditary right. But now in 1689 a statute enacted that a Roman Catholic king, or a king whose consort was of that religion, could not be king of England. Statute law took precedence over natural and 'divine' law. This was a serious breach in the Tory doctrine of kingship.

This clause was admittedly exceptional. The resistance doctrinaires themselves confessed that it would be absurd to expect parliament to give a legal sanction to resistance.⁽¹⁾

(1) Locke's right of resistance was extra-legal. Cf. Appendix I, Note 53.

Resistance was a natural right and by its very nature could never be a legal right. The only time the two houses discussed resistance was at the Sacheverell Trial, and, in that case, they were sitting as a court of justice, not as a legislative body. The history of the doctrine, therefore, is to be found mainly outside Parliament.

III : Change from the abdication to the resistance theory of the Revolution.

The convention, and the parliaments which followed it, studiously avoided being drawn into a discussion upon the doctrine of non-resistance.^① But although the official interpretation of the Revolution was abdication, by which it was left to be inferred that the doctrine had not been violated, yet the debates in the Convention contained much of the material out of which the doctrine of resistance was built. The references to an original contract and especially its inclusion in Somers's resolution, and the stress put upon James's dispensing with laws demonstrated that resistance to James was being

(1) The only reference in the Convention to resistance was made when the Speaker drew the attention of the Commons to the fact that Dr. Sharp, who had preached before them on January 30, had prayed for James by the title 'his most excellent majesty.' Howe said : "The vote we made is contrary to passive obedience and this man preaches it up." (Grey's Debates, ix, p.37.) Some argued that Sharp was required by the Rubric to pray as he did. The clergy always appealed to the Articles in defence of their preaching non-resistance. (Cf. Sacheverell, below, p.163.) Sharp, for the sermon, was thanked by the house, nem. con. on 1 February, 1688/9. (House of Commons Journals.)

supplied with its justification although at the same time resistance was being officially denied. Many of the arguments put forward by pamphleteers before the Convention met were adopted by it, although the conclusion - the right of resistance - drawn by these writers, was not adopted.⁽¹⁾ The Convention's resolution was a bundle of inconsistencies. The conclusion did not logically follow from the premiss. And, after the Convention had done its work by securing the coronation of William and Mary, pamphleteers more and more came to disregard the findings of the Convention and to adopt an interpretation of the Revolution which would be more in keeping with the facts.

By putting forward the plea of contract, the Convention hoped to be able to plead 'not guilty' to the charge of deposing their king. The assumption was that a theory of contract was not inconsistent with the doctrine of non-

(1) A comparison between the debates and Ferguson's A brief justification, etc. is most illuminating. Practically all Ferguson's arguments were adopted.

resistance. The original contract, it is true, had been explicitly condemned by such writers as Sanderson, by the Decrees of the University of Oxford, and indeed by all adherents of the doctrine of non-resistance. And a contract, it may be argued, that cannot be enforced is no contract, and a king cannot be forced to observe his part of it if he may in no case be resisted. But there was a subtle distinction made between the declaring of the contract to be broken by the king, and the using of force against him. It was just for this reason that the contract theory served its purpose in the debates in the Convention. If James had, by his own voluntary acts, broken the contract, then he had ceased to be king and the doctrine of non-resistance was irrelevant.

The question of James's deposition had arisen in the Convention, but it was obvious that no one was prepared to give his opinion on that delicate matter. The lower house was shocked at Musgrove's indiscreet mention of deposition. When he asked if the Convention

had power to depose a king, the members were determined that his question should not be answered. Maynard said: "I know not the meaning of this, but I am afraid of a meaning." And Treby said of Musgrove's question "though he speaks pertinent, yet it is not proper now." So far as the debates show, the subject of deposition was regarded as irrelevant.⁽¹⁾ The frequent references to the deposition of Edward II and Richard II were not made to support the deposition of James. They were merely brought into the discussion to illustrate the legal significance of the words 'demise' and 'abdicate'. Burnet tells us that it was maintained in the Convention that "Edward the Second and Richard the Second were deposed for breaking ... laws: and these depositions were still good in law, since they were not reversed, nor was the right of deposing them ever renounced or disowned."⁽²⁾ But in contrast with

(1) Grey's Debates, ix, pp. 10-13.

(2) Hist., iii, pp. 358-9.

this statement, he also tells us that "The republican party were at first for deposing king James by a formal sentence, and for giving the crown to the prince and princess by as formal an election. But that was overruled in the beginning."^① The interpretation that James had abdicated was adhered to, as we have seen when we were considering the part played by the Convention.

While abdication was the official interpretation, there were not wanting writers who hinted at deposition. Indeed, it would have been strange if, at such a juncture in our history, there had been no one prepared to avow the right. In 1689 there was published in London A true relation of the manner of the deposing of King Edward II ... as also an exact account of the proceedings against King Richard II and the manner of his deposition. Sir Robert Howard dedicated his History of the reigns of Edward and Richard II^② to William III. Howard, in this work, maintained the justice of the depositions of Edward

(1) Op. cit., iii, p. 375-6.

(2) Published, London 1690.

and Richard and by inference that of James

II.

Among other works published at this time which inferred deposition, may be mentioned The causes and manner of deposing a popish king in Swedeland truly described^① (Feb., 1689) and The supremacy debated^② wherein the author asserted that the people "have power to depose their kings, in case they contemn the laws, and violently rob and spoil their subjects"^③. It is a significant fact, too, that the Vindiciæ contra tyrannos was reprinted in London in 1689. It is clear, however, that views expressed in these works represented only a very small section of thought at the Revolution. It is sufficient for our purpose to note that such ideas were entertained; and their real significance lies in the fact that they did not gain recognition by any influential thinker. The right of deposition as distinct from the right of resistance was never again seriously put forward as an explanation of the Revolution. Few men were so bold

(1) In S.T.Wm.III, i, pp. 229-230.

(2) In S.T.Wm.III, i, pp. 231-233.

(3) Op. cit., p. 232.

as to assert that James II had been deposed.^①

Had James been deposed, the exact date of deposition would have been upon record. Even the 28th January could not be taken as the date, for the resolution of that day spoke of James "having abdicated", that is, some time before 28th January. The problem of a date did arise. One writer said: "we were legally discharged of our allegiance to James the Second the eleventh of December last past".^② The selection of this date was not a happy choice for it suggested that force was used. It gave significance to Pollexfen's remarks: "The stronger did chase the weaker" and to his question: "What means the noise of arms?"^③ The fact is, the abdication theory was best supported by the choice of no definite date. The abdication of James, said an anonymous writer, "may bear date from the day he

(1) See Appendix I, Note 43a.

(2) The history of the desertion, etc. (1689). S.T.Wm.III, i, pp. 38-39.

(3) Grey's Debates, ix, p. 21.

first erected the Court of Ecclesiastical Commission, established a standing army in the nation, or took those customs the grant whereof expired by King Charles II's death, and ought not to commence again till given by another parliament. This was done in the very infancy of his reign, whereby his abdication became an early act".^①

This line of reasoning is based on the assumption that the king is king by law and holds his position on the understanding that he governs by law. The condition of his tenure of the kingship is his governance by law according to the original contract.^② But even if we grant that the king by his illegal acts abdicates the throne, we must see that the king may

(1) The proceedings of the present parliament justified by the opinion of the most judicious and learned Hugo Grotius. S.T.Wm.III, i, p. 183. This author used this argument because Grotius had said (De jure belli ac pacis, Bk. II, chap. 7 § 26.) that children born before their father's abdication could not be deprived of the succession. He, therefore, makes James II's abdication take place before the birth of the Prince of Wales.

Cf. Also Appendix I, Note (4).

(2) On this subject, see below, chap. 5.

govern for an indefinite time after the abdication takes effect. James, on the assertion of at least one writer quoted above,⁽¹⁾ had held the reins of government for several years after he had ceased technically to be king. If no drastic action had been taken in 1688, would James have continued in this anomalous position till his death? Obviously, this would have been the case unless official cognisance had been taken of the king's 'abdication'. Whose duty was it to make this official pronouncement? In the particular events of the Revolution, this had been done by the Convention. But the choice of time had not been left to it. It had been determined by James's flight. If James had not fled, when would the declaration have been made? These questions undoubtedly agitated men's minds, and the sequence of actual political events could not be disregarded in relation to the ultimate declaration that

(1) See above p. 114.

James had abdicated. Had William not been called in to put pressure on James, would James have abdicated the government as he did, and if James had not abdicated the government, would a Convention have met and declared the throne vacant? Reasoning thus, the Whigs confessed that James would not have lost his throne but for an armed insurrection. And that the Revolution was founded on resistance came to be the official interpretation of the Whigs. Leslie in 1709 said to Hoadly:

"You took up the mobb-story that it was founded upon resistance: but neglected the Convention and their wise debates, which gave it another term. And now you see the reason why they did so. For if they had put it upon the foot of resistance they had gone manifestly counter to the known laws of the land, and to the Homilies of the Church, which would disoblige the clergy not a little".⁽¹⁾

And in the following year, Leslie made the same observation.

"Another change I observe is, that abdication is now run down, and the Revolution

(1) Best of all, being the students' thanks to Mr. Hoadly (1709), p. 18.

must be all resistance. None can deny but abdication was set up at the Revolution and in a sense different from that of resistance which occasioned the long debates about it in the Convention." ©

Although Leslie held extreme views, we must admit that here at least he made a fair and accurate statement of the change of opinion. It will be our task now to trace the history of this change.

(1) The good old cause further discussed. (1710)
p.7:

IV. The slow development of the doctrine of resistance until Anne's reign.

James II had relied on the doctrine of non-resistance to prevent murmurings against his Romanizing policy from becoming open rebellion.^① This is shown by his request to the bishops to make a public declaration in support of that doctrine. Their refusal might have warned James as to the way the wind was blowing, but he was too headstrong to take heed. The bishops' action showed that that doctrine was not to be used for the destruction of the church. As long as the king supported the church, the church would support him by preaching this doctrine.^② But because the doctrine was abused by one king, it did not follow that it was inherently wrong, and the bishops by declining to make the declaration did

(1) "The unaccountable doctrine of passive obedience, as it was the source of a great many mischiefs among our selves, so what has befallen the king, may be partly imputed to it" - An answer to the late king James's Declaration ... Dated at Dublin Castle, May 8, 1689. S.T.Wm. III, ii, p. 61.

(2) "The reason why the clergy were so zealous for tyranny, was because it was a tyranny on their side" - Samuel Johnson, Notes on the phoenix edition of the Pastoral letter (1694) in Works (1710), pl 307.

not thereby abandon it. They suspended for a time its propagation^① but it remained the doctrine of the church, and when the church and monarchy were once again restored to a close harmonious partnership in Anne's reign, its teaching was renewed. That the bishops took this stand with regard to the declaration; that seven of their chief members suffered imprisonment in the Tower and thus materially helped the Revolution, were facts later held up by conciliating Whigs as an example of their liberal mindedness and a contrast to the church's return "to the land of Egypt"^② and by the more uncompromising of the Whigs as proof that the doctrine of non-resistance had been

(1) A writer said that they withdrew themselves from the king's personal service in order to be able to serve his real interest. They suspended their allegiance. See Reflections upon our late and present proceedings in England. Som. Tr., x, p. 180.

(2) A phrase frequently used in pamphlets to denote a reversion to pre-Revolution principles.

preached by the clergy not in the interests of the king but in their own selfish interests.⁽¹⁾

While the church would not assist James to effect her own ruin, she was not prepared for so drastic a remedy of her ills as the dethronement of her king. Thus, many churchmen felt that they had gone too far: that in their excessive loyalty to their church they had been disloyal to the crown.⁽²⁾ The Revolution had been accomplished and if they could not undo what had been done, they could at least refuse to recognise

(1) A modest inquiry into the causes of the present disasters in England, etc. S.T.Wm.III, ii, p. 96.

Samuel Johnson, An argument proving, etc. 4th ed. (1692), p. 9 in Works (1710), p. 261.

Defoe, Jure divino (1706), p. ii.

Defoe, High-Church address (1710), p. 16.

See Appendix I, Note 45.

Cf. also Tindal, The Jacobitism, perjury and popery of High-Church priests (1710), pp. 3-4.

(2) "Very seldom could either a priest or a soldier be seen in the assemblages which gathered round the market crosses where the king and queen were proclaimed ... The parson of a parish was naturally unwilling to join in what was really a triumph over those principles which, during twenty eight years, his flock heard him proclaim on every anniversary of the Martyrdom and on every anniversary of the Restoration." - Macaulay, Hist., iii, pp. 1315-1316.

the new king. And consequently we have the non-juror schism. The non-jurors clung to the doctrine of non-resistance and refused to swear allegiance to William because he ascended the throne through a breach in the wall of that doctrine. But in accordance with their own public assurances that they would remain quiet though passively hostile, they allowed the doctrine to remain in abeyance. And the rank and file of the church, although they took the oaths, were not likely to preach a doctrine of non-resistance on behalf of a Calvinistic king, whom they regarded as lukewarm in their interest.^① There

(1) Cf. "They [the High Church men] were engag'd in continual plots against him. all his life, and never preach'd passive obedience to him." - Toland, Memorial of the State of England (1705), p. 20.

"The publick is sensible what inconveniences it has been brought into by the prevalency of your passive doctrines, and may look for a reasonable restitution, viz. that you shall make the nation honorable amends, by being as hearty and zealous in preaching up obedience to the present government. For till this be done, tho you swallow the oaths, and come in to the last man, there must go large grains of good nature to allow your sincerity." - Plain English, or an inquiry into the causes, etc. (1691). S.T.Wm.III, ii, p. 184.

was, consequently, little heard of that doctrine from 1689 till 1702.^①

The Revolution was a violation of the doctrine of non-resistance, and was so regarded except by the conquest school in William's reign and by a section of the Tories in Anne's.^③ But in the heat and excitement of the crisis the doctrine was forgotten. Facts were of more importance than theories; and the change of monarch which had been accomplished in such a remarkably short space of time and with an ease that astonished even the principal actors themselves in the drama, left them quite unprepared for the task of giving a unanimous theoretical justification. The

(1) See Appendix I, Note 46.

(2) See below, chap. 4, sect. 1, pp. 204-219.

(3) See below chap. 3, sect. 2.

The Revolution was not founded upon resistance, said the author of A true defence of H. Sacheverell in a letter to Mr D[olbe]rn (1710), p. 5.

Cf. also Doctor Sacheverell's defence in a letter to a member of Parliament, etc. By R.G. (1710), p. 6.

leaders of the revolt did not act with the conviction that they had a right to resist the king. They were driven on by what they felt was sheer necessity. Almost alarmed at their own intrepidity, the members of the Convention avoided any minute examination of their actions and did their best to give a semblance of legality to what they did. There was an obvious reluctance to abandon the doctrine of non-resistance.^①

While the Convention acted with studied caution and reserve, pamphleteers were not

(1) "There's one topick which all these pamphlets insist mightily upon, viz. that such and such men have formerly writ and preach'd contrary to the principles and practices which they now own; as if it were altogether unlawful for a man to change his mind, or yield to the force of argument" - A defence of the Archbishop's sermon on the death of her late majesty, etc. (1695). S.T.Wm.III, ii, p. 538.

Cf. Defoe. The church, he said, should admit she was wrong in holding the doctrine of non-resistance. "She was mistaken, and 'tis no disgrace or reflection on any church or any people or person, when they find themselves in an error, to own it, acknowledge and reform it" - Jure divino, (1706), p. iii.

wanting who boldly asserted that all the troubles of James's reign had been the result of "that bug-bear Dagon of passive obedience... a notion crept into the world, and most zealously, and perhaps as ignorantly defended."^① The doctrine of non-resistance was attacked in pamphlets^② and less frequently the justice of resistance maintained.^③ The right of resistance was put forward in 1689 and in the following year or two as a principle on which the Revolution might be justified. It was not, however, generally accepted even by the Whigs,

(1) Political aphorisms, S.T.Wm.III, i, p. 396.

(2) Cf. The doctrine of passive obedience and jure divino disproved, etc. (1689). S.T.Wm.III, i, pp. 368-371. Ferguson spoke of "their treasonable doctrines of passive obedience and non-resistance." - A brief justification, etc. (1688). S.T.Wm.III, i, pp. 140-1.

Cf. also Johnson's Notes on the phoenix edition of the Pastoral letter [by Burnet] and his An argument proving, etc. (1692) e.g. at p. 7, in Works (1710), p. 261.

(3) Cf. Masters, The case of allegiance... considered. (1689) S.T.Wm.III, i, pp. 318-333. Political aphorisms. (1688) S.T.Wm.III, i, pp. 386-402.

Johnson, Notes on the phoenix edition, etc. in Works, p. 308. See Appendix I, Note 47.

for, as we shall see in a later chapter,^① the rival theories of resistance and non-resistance were both, to a large extent, avoided in the reign of William, and the position that William was only de facto king was accepted as an adequate reason, on the grounds of expediency, for supporting the Revolution settlement. On the basis of William's de facto kingship the question of allegiance was debated. The doctrine of resistance did not come to the forefront of political controversy till the reign of Anne, chiefly because the doctrine of non-resistance, as we have suggested, was largely in abeyance. The doctrine of resistance was mainly a counterblast and as long as the doctrine of non-resistance was not prominent, there was no necessity for preaching resistance.^②

(1) See below, chap. 4, sect. 2.

(2) An examination of the Term Catalogues shows clearly that political speculation on the Revolution was prominent from 1688 till about 1692, and from 1702 onwards. After 1692 men's interests turned mainly to theology and centred round the deist controversy. The only problems affected by the Revolution were those of a standing army, the Convocation controversy and the agitation over occasional conformity, which all began about 1697.

When William's right was upheld it was usually by men who accepted the Convention decree that James had abdicated.^①

The real battle over Revolution principles began in Anne's reign. Anne succeeded according to the terms laid down by statute, and, in so far as her title was recognised to be parliamentary, the Revolution settlement might be said to have thereby strengthened its foundation. But a set-back was given to the Whigs when the High-Tories put forward the plea of Anne's hereditary title.^② Hereditary right and non-resistance were parts of the same doctrine. The Tories now took every opportunity of propagating the doctrine of non-resistance, and the clergy preached it from their pulpits.^③

(1) See An enquiry into the nature and obligation of legal rights. (1693) S.T.Wm.III, ii, pp. 392-412.

(2) See below, chap. 4, sect. 3.

(3) Burnet in 1703 addressed A memorial to the Princess Sophia, wherein he denounced the High-Church for preaching non-resistance. See Calamy, An historical account, etc., ii, p. 2, note.

Some doubts have been raised as to whether Burnet was the author of the Memorial.

The Whigs accused the Tories of abetting arbitrary government. The Tories accused the Whigs of being republicans; and on the 30th January each year the Tory clergy denounced the murder of Charles I, and pointed to the Whigs as the spiritual descendents of the regicides.

The Tories, according to the Whigs, were not only threatening the Revolution settlement by their revival of the doctrine of non-resistance. Within the first few months of Anne's reign it was threatened by the Tory attacks on the Toleration Act. A Tory House of Commons made several attempts to pass into law a bill against occasional conformity. They were frustrated mainly in the House of Lords through the opposition of William's bishops. The Tories turned wrathfully on the Whigs and denounced them as enemies of the church. The Revolution, they said, had had as its main purpose the preservation of the church, but the Whigs had made use of it to encourage non-conformity and even atheism. In justice to the Tories, we

must bear in mind that the doctrine of resistance had been and was supported by men whose church principles were not above reproach. Locke had been accused of atheism. Ferguson probably had no religion and was certainly a discredit to any party. Defoe was a Dissenter. Bradbury was a Dissenter. And Tindal and Toland were both Deists. Hoadly, though a churchman, was undoubtedly one of Sacheverell's 'false brethren'. While this concession is made to the Tories, it must also be allowed that the Whigs were unfortunate in having their political faith judged by the standards of High-Church theology. The outcry against the Whigs was intensified when Drake published his Memorial of the Church of England⁽¹⁾ in 1706, wherein he alleged that the church was in danger from Anne's Whig ministers. The clamour was temporarily silenced by a resolution of parliament that the church was not in

(1) Walpole called it "one of the most impudent books that was ever printed in any age or nation." - Four letters to a friend in North Britain upon the publishing the tryal of Dr Sacheverell. (1710) p. 4.

danger and that anyone who suggested it was an enemy to the queen and nation. But Drake's insinuations were repeated in Sacheverell's famous sermon of November 5, 1709. The latter's prosecution appeared to the Tories to be proof that there was a Whig plot against the church. High-Toryism became rampant, at first in defence of Sacheverell, and when his light sentence was regarded as an acquittal, High-Church Toryism took the offensive and remained the dominating political philosophy till the end of Anne's reign.

In the struggle throughout the reign, the Whigs were always on the defensive. They were able to hold their own only by making use of the war against France. The war stood for a crusade against the European dominance of France, which, as Defoe said in his Review, stood for arbitrary government. A victory for France would mean the victory of the Jacobites and the return of arbitrary government and popery. It was a Whig war, just as the Peace of Utrecht was a Tory peace. The Whigs stood for the Revolution and its results, - the war with

France, the Preservation of the Toleration Act, and the Hanoverian succession. The Tories were mainly composed of the High-Church party, who opposed the war and consequently brought it to as speedy a close as they could when they came into power in 1710; who suffered non-conformity to be barely tolerated, attacked vigorously occasional conformity; and who opposed the admission of anyone to offices in the state who were not members of the Church of England. The Tories, in defence of the church, clung to the doctrine of non-resistance, which, they said, was its traditional teaching. To deny that doctrine, they asserted, was to undermine the foundations of the church. The Whigs retorted that that doctrine undermined the state, for the Revolution settlement was founded on resistance. Only by the adherence to the doctrine of resistance as exemplified in 1688 could the justice of Anne's tenure of the throne be vindicated.

Resistance, the Revolution and the Hanoverian succession : non-resistance and Jacobitism - these seemed to be the alternatives between which Englishmen must choose. The protagonists in the struggle were Hoadly and Defoe on the one side, Leslie and Sacheverell on the other. Between these two extremes came Swift, perhaps occupying the most important position of all because of his moderation. It was Swift, more than anyone else, who brought together the antagonistic theories of resistance and non-resistance and demonstrated, like his 'contemporary' Sir Roger de Coverley, "that much might be said on both sides."

V : The growing antagonism between the doctrines of resistance and non-resistance in Anne's reign, leading up to the Sacheverell Trial.

Anne's reign is noted for the rise of periodical literature. This type of literature was mainly didactic, and even the lightest periodical, such as the Spectator, was intended to inform and reform as well as to amuse. In addition to the everyday events of politics, political philosophy was freely discussed. The chief of these journals were Defoe's Review and Tutchin's Observator on the Whig side, and Leslie's Rehearsal and Swift's Examiner on the Tory.

On 19th February, 1704, the first number of the Review appeared. Its full title was A review of the affairs of France, and its object was to give a running commentary on European politics. Its main theme, however, was the evil of arbitrary government and the blessings which the Revolution had bestowed upon England. Defoe in the Review and Tutchin in the Observator (which first appeared in 1702) kept before their readers the Whig principles of

government based on the Revolution. In August of 1704, Charles Leslie inaugurated his Rehearsal^①, a weekly paper written in opposition to Defoe and Tutchin. In the collected edition^② of the paper, Leslie explained his object in writing it. It was not "to kick and cuff with Tutchin, De Foe, and the rest of the Scandalous Club." But "he saw great pains taken to poison the people of this nation with most pernicious principles, both as to church and state." Most of the people cannot read,"but they will gather about one who can read, and listen to an Observator or Review (as I have seen them in the streets) where all the principles of rebellion are instilled into them." These people were not the heads of rebellion, but they were the hands,

(1) "The Rehearsal began to be spread over the nation, two of them a week, which continued several years together, to be published without check or controul. It was all through one argument against the queen's right to the crown."- Burnet, in his speech at the Sacheverell Trial, S.T., xv, 491.

(2) Under the title A view of the times. 6 vols. 1750.

and since it was not in the power of Leslie to stop these pernicious papers, he decided to answer them in the Rehearsal.^①

It was about this same time, when the newspaper war was getting into full swing,^② that Benjamin Hoadly began to attract notice for his vigorous defence of the Revolution and of the doctrine of resistance. In a sermon before the Lord Mayor of London on September 29, 1705, on Romans XIII, 1, "He represented the public good as the end of the magistrate's office, and the warrantableness of resistance when the end is destroyed. At this sermon some were much disturbed. Among the rest, the Bishop of London had a fling at^{it}, in the Lords, when 'the danger of the church' was under debate ; and several assaulted him from the press."^③ Whenever the doctrine of resistance

(1) Op. cit., i, pp.iii-iv.

(2) It was also about this time, according to Defoe that the world went mad a second time over the doctrine of non-resistance. See Jure divino. (1706) p.1.

(3) Calamy, An historical account of my own life, ii, p.40. See also Appendix I, Note 48.

had to be vindicated, Hoadly was in the vanguard of the battle. He came to be regarded as the champion of the doctrine, and the word 'Hod^①leian' was coined to denote a man of Revolution principles. When the House of Commons resolved in 1709 to impeach Sacheverell, they also resolved : "That the Reverend Mr Benjamin Hoadly, Rector of St Peters' Poor, London, for having strenuously justified the principles on which her majesty and the nation proceeded in the late happy Revolution, hath justly merited the favour and recommendation of the House."^②

Although the lower clergy constantly preached the doctrine of non-resistance, their sermons had no apparent influence outside their parishes. Their collective influence was felt only when some outstanding event occurred such as the Sacheverell Trial. But there were several sermons which, owing to the prominence of the

(1) See Chuse which you please, etc. (1710)
Mr Toland's reflections on Dr Sacheverell's sermon. (1710)

A letter to Sir J[acob] B[anks]...concerning the late Minehead doctrine. (1711)

(2) House of Commons Journal, 14 Dec., 1709.

preachers, or of the pulpits from which the sermons were delivered, were marked out for special attention. A few of these may be conveniently mentioned here.

One sermon which was to be much discussed was preached on January 30, 1707/8 by William Wake, Bishop of Lincoln, before the House of Lords. At any other time, the sermon would have passed unnoticed. But when the controversy between the doctrines of resistance and non-resistance was running high, the rival parties seized on the sermon as one which supported or opposed their respective theories. The sermon was regarded by many as a vindication of the doctrine of non-resistance, and when the House of Lords thanked him for preaching it, this was held to prove that the House favoured the doctrine. This fact was noted by Michael Maittaire and was offered by him in defence of the doctrine of non-resistance.^① The construction put upon the Bishop's sermon is significant as showing the temper of the resistance doctrinaires. The Bishop of Lincoln, it must

(1) Doctrine of passive obedience (1711) p. 13.

be remembered, spoke in the House of Lords against Sacheverell and was among those who voted the doctor guilty.^①

Wake preached on the text, Matthew xxv, v.51-52, and the significant words were Christ's rebuke to Peter : 'Put up again thy sword into his place : for all they that take the sword shall perish with the sword.'^② Wake argued that although a man had the right to defend himself with the sword against a surprise attack, no private person had the right to use the sword against a lawful magistrate. The soldiers, who were sent to arrest our Lord, proceeded in a legal way and no private person, such as Peter, had a right to oppose them by force. In words which recall those of Sanderson,^③ Wake said : "Their procedure being

(1) S.T., xv, 503-516, 469.

(2) Wake, Sermons preached upon several occasions. (1722) iii, pp.160-183.

(3) See above, p.24.

lawful, they were not to be resisted, no not in defence of our Saviour Christ himself." ^① Furthermore, Wake employed the illustration of the forbearance of David to take the life of Saul when he had the opportunity, a favourite illustration of the non-resistance doctrinaires. ^② Although Wake seemed to be arguing for non-resistance, yet he implied that he approved of the Revolution as an example of resistance. If Charles I, he said, (and his hearers could substitute the name of James II) had chosen rather to desert the government than to rule according to his oath, and the fundamental laws and limitations of it, this might have warranted an oppressed people taking the sword for the necessary defence of their laws and constitution, their religion and their liberties. ^③

(1) Op. cit., p.175.

(2) Ibid., pp.180-182.

(3) Cf, quotation in Appendix I, note 33.

Wake, in this sermon, was really on the side of the resistance theorists. His maxim that it is unlawful to resist lawful authority was a cardinal part of the doctrine. But he was unfortunate in the choice of his illustrations, for, since they were the stock property of the non-resistance theorists, they appeared to the uncritical mind to put Wake on their side.

Of more importance than Wake's sermon in accentuating the differences between the resistance and non-resistance theorists was Bishop Blackall's sermon preached on March 8, 1708, the anniversary of Anne's accession to the throne. His sermon was on 'The divine institution of magistracy and the gracious design of its institution.'^① It was at once observed that the tone of this sermon was very different from one^② that he had preached on March 8, 1704, that is, exactly four years previously. During the interval, Blackall

(1) In Works, ii, pp.1161-1173.

(2) The subject's duty in Works, ii, pp.1121-1135.

had been made Bishop of Exeter on the sole initiative of Anne. It looks as if Blackall's more pronounced leanings towards absolute monarchy in the latter sermon was his way of showing his gratitude to Anne for her favour. His outward expression, at any rate, had obviously changed.

The similarities and differences between the two sermons were clear. In both sermons he spoke of the necessity for an absolute power in a state and the duty of non-resistance, but in the former sermon he placed that power in parliament, in the latter in the king. In the former, he upheld the popular origin of government, but in the latter he stated clearly that the origin of sovereignty was not popular but divine.

Hoadly, always ready to accept any challenge, did not miss this opportunity of again appealing to the public in vindication of the doctrine of resistance. He wrote a reply to Blackall under the title Some considerations humbly offered to the...Bishop

of Exeter in 1709.^① He began by pointing out the differences to be observed in the two sermons. Hoadly was able to accept most of the former sermon, but the whole of the latter he strenuously rejected. Blackall's supporters did not attempt to reconcile the two sermons. They accepted the latter. That Blackall had been inconsistent they were ready to admit, and they asked Hoadly if it were a sin for a man to change his opinions.^②

Hoadly seized on Blackall's assertion: "From the magistrate's being called the minister of God by St Paul...he hath none above him upon earth...and that he is accountable to none but God."^③ He argued that the magistrate is the minister of God 'for good.', If the magistrate acts otherwise, he acts out-with God's commission, and thus forfeits the right, as enjoined by Paul, to absolute

(1) See Appendix I, Note 49.

(2) Leslie, Best answer, etc. Preface.
Tom of Bedlam's answer, p. 5.

(3) Hoadly, op. cit., in Works, ii, p. 127.

obedience.^① All that he contended for, said Hoadly, "is this, that there should be a right left in the governed society to preserve it self from ruin and destruction."^②

He challenged the Bishop of Exeter to prove that God gave the magistrate any power contrary to the end for which government was instituted. The magistrate's power, he declared (following Locke) could not be greater than that of the society which elected him. His authority is limited to the public good and if a magistrate attempts to ruin a nation, "self-defence is a most necessary and lawful practice."^③

Following Locke, Hoadly argued in opposition to Blackall that men, not in a state of political society, are born free, that they

(1) Op. cit. in Works, ii, pp.127-129.

This was Hoadly's favourite argument. He had already used it in his sermon of September 29, 1705. See Works, ii, pp.18-25. Cf. also above, p.70 and Appendix I, Note 48.

This argument was also used by Robert Fleming. See his The history of hereditary right. 1711 p.134.

(2) Hoadly, op. cit., p.129.

(3) Ibid., p.134.

enter into political society by an original contract and transfer to the magistrate so much of their power, but reserve to themselves the right of self-defence. This right they may exercise if the magistrate exceeds his commission.

Passing from the metaphysics of government, Hoadly ended his pamphlet with reflections on the Revolution. In 1688, he said,

"Those of the highest, as well as the holiest rank, and of the best quality, invited over a prince with armed men, to awe their legal sovereign king, and force him into a compliance : and this they did in their private capacity...A revolution succeeded, which your lordship acknowledgeth to have wonderfully saved both church and state from ruin. Upon this foundation is built all our happiness." Without this resistance "we had never had a queen, so great an ornament to the throne, nor bishops so great ornaments to the mitre ; nor anythink of property, and Protestantism, by this time left. And, since this is so,..since these are the benefits which the nation hath reaped by resistance; since to resistance we owe that establishment in the Protestant line...I may ask, what harm hath resistance ~~done~~ lately done, either to the queen, the church, or the nation, that it must be thus run against with so unlimited a zeal ?" ^Q

(1) Ibid., pp.137-138.

Bishop Blackall replied with an unconvincing^① pamphlet called The Lord Bishop of Exeter's answer to Mr Hoadly's letter in the same year, and Hoadly rejoined with An humble reply to...the Lord Bishop of Exeter's Answer. The Bishop was of no more consequence in the political sphere than was Sacheverell a year later, but both provided the occasion for a public debate on the respective merits of the doctrines of resistance and non-resistance. In Blackall's case, the contest developed into a single combat between Hoadly and Leslie. Leslie entered the fray with a paper entitled The best answer ever was made and to which no answer ever will be made... address'd in a letter to Mr Hoadly himself and followed this with Best of all, being the student's thanks to Mr Hoadly.

To Hoadly's assertion that the Revolution was founded on resistance and that Anne's

(1) Even a Tory writer admitted that Blackall merely "huddled up a kind of reply." - The fourth and last part of a caveat against the Whiggs. 2nd. ed. (1710) p.119.

title was dependent on that recognition, Leslie replied that there was no resistance, that the Convention gave the crown to William following the abdication of James^① and that, although Anne might have a Revolution title, her main one was hereditary.^② Leslie strenuously upheld the doctrine of non-resistance and the divine right of kings.

The controversy of 1709 became merged in the Sacheverell affair of 1709/10, but the Blackall-Hoadly debate proper was summed up in a pamphlet named The divine rights of the British nation and constitution vindicated, published in 1710. The author took the side of Hoadly, of whom he says : "Mr Hoadly is a person well known of late years, by his preaching and writings, which show him a gentleman of good sense, and, which is a character that deserves particular notice, he

(1) Best of all, etc., pp.12-14.

(2) Ibid., p.15. Cf. below, p.256.

heartily loves his country and the constitution." ^① Of Leslie, he says he has an "excellency" of "banter and scurrility" of "revilings, infamous slanders and clamorous rudeness." ^② But even Leslie's revilings were eclipsed by the vitriolic eloquence of Dr Henry Sacheverell, whose sermon before the Lord Mayor of London on November^{5th}, 1709, brought down on his head the wrath of the Whigs and made him the idol of the Tories. The trial ^hwhich arose out of this sermon is so important in the history of Revolution political thought that a separate section must be devoted to it.

(1) Op. cit., pp.5-6.

(2) Ibid., p.12.

CHAPTER THREE (continued)

Section II. The Sacheverell Trial

I. Introduction.

II. The sermon.

III. The Trial.

I. Introduction.

The high-water mark in the controversy over the doctrine of resistance was reached in the Sacheverell Trial at the beginning of 1710. Sacheverell was charged with preaching (and subsequently printing) two seditious sermons at Derby assizes on August 15th^① and at St. Paul's, London, on November 5th^① 1709 respectively. Complaint was made of these sermons in the House of Commons on December 13 and Sacheverell was ordered to attend at the Bar of the House, which he did the following day. The Commons, having received Sacheverell's confession that he preached the said sermons, immediately ordered his impeachment. The trial began on the 27th February 1709/10 and lasted till March 23rd. Since the trial of the seven Bishops in 1688 no other trial aroused such

(1) The communication of sin.

(2) The peril of false brethren. The printed sermon had a great popularity. It was said that 100,000 were issued. See The thoughts of a country gentleman upon reading Dr. Sacheverell's Tryal, etc. (1710) p. 6.

widespread popular interest as did the impeachment of Sacheverell.

At this time the Whig ministry was subjected to much bitter attack by their opponents. A wave of High-Church Toryism was spreading throughout the country and the certainty of the ultimate succession of the House of Hanover was by no means yet secured. The Whigs believed that a restoration of the House of Stewart was within the bounds of practical politics if the people could be made to believe that the Revolution was unjust and therefore the reigns of William and Anne, based on that illegal act, usurpations. The impeachment of Sacheverell was promoted by a Whig House of Commons not ostensibly with any desire to punish the prisoner but to provide themselves with a public forum whence they might vindicate to the whole nation the justice of the Revolution and the justice of the Toleration Act. It was to be a test case. The object of the trial, as stated by Dolben, was "to obtain an occasion, in the most public and

authentic manner, to avow the principles, and justify the means, upon which the present government and Protestant succession are founded and established".^① Sacheverell himself was of no account. He was "an inconsiderable tool of a party"^② according to Stanhope. But the Whigs wanted a judgment which "shall determine what doctrines of this kind shall or shall not be preached".^③

Whether the impeachment was wise or not from the Whig point of view, it was at least a fortunate event for students of the Revolution period, for it provides an excellent exposition on Revolution principles. We must, however, note that both sides spoke with more moderation than they were wont to do in a less public forum. The managers for the Commons and the counsel for the defence were less uncompromising than their protagonists out of doors.

(1) S.T., xv, 168.

(2) S.T., xv, 134. Sacheverell in his speech at the trial referred to this: "I am, it seems, an insignificant tool of a party not worth regarding". S.T., xv, 364.

(3) S.T., xv, 134. See Appendix I, Note 50.

There were four Articles exhibited against Sacheverell. The preamble stated that he had attempted to "undermine and subvert Her Majesty's Government and Protestant succession as by law established" with a "wicked malicious and seditious intention". The first Article was worded as follows:-

"He, the said Henry Sacheverell in his said sermon preach'd at St. Paul's doth suggest and maintain, that the necessary means us'd to bring about the said happy Revolution, were odious and unjustifiable: that his late Majesty, in his Declaration disclaim'd the least imputation of resistance, and that to impute resistance to the said Revolution, is to cast black and odious colours upon his late Majesty and the said Revolution".^①

This Article was the most important, and it was on this one that Sacheverell was ostensible condemned.^② The second Article recited that:-

"the said Henry Sacheverell in his sermon preach'd at St. Paul's doth suggest and

(1) S.T., xv, 38.

(2) Lechmere said that "all parts of the design of the prisoner center" in the first article - Trial. S.T., xv, 59.

Sir Joseph Jekyll said: "The whole charge centers in this article." S.T., xv, 96.

maintain, that the aforesaid toleration, granted by law, is unreasonable, and the allowance of it unwarrantable".^①

To the Whigs the Toleration Act was the keystone of the Revolution arch. Though the Whigs in the House of Commons were necessarily conformists they stoutly defended the non-conformist Protestants. That the Toleration Act was never repealed shows that public opinion was strongly in its favour. The Tories even in their period of triumph from 1710 to 1714 did not make any attempt to expunge it from the Statute Book. But the Whigs feared a revival of High-Toryism. And should Toryism succeed to the extent of repealing the Toleration, then it seemed to the Whigs that the whole Revolution Settlement must collapse. There was nothing in the sermon that Sacheverell said against resistance that had not been said a hundred times elsewhere more violently. Therefore the question naturally arises; why was Sacheverell impeached when

(1) S.T., xv, 38-39.

others were untouched? The answer seems to be found in the second Article. The sermon was a most violate^{ent} diatribe against the Low Churchmen who, to Sacheverell, showed too friendly leanings towards the Dissenters. The Whig ministry was attacked for encouraging Dissenters and for preparing the way for the downfall of the Anglican Church. Even in this attack Sacheverell had been forestalled by the author of the Memorial of the Church of England. If the author of this work had been known and had the Whigs been in the same strategic position in 1705 as they were in 1709/10, he would have been as worthy a scapegoat as Sacheverell. But taking the

(1) Dunton, in his wrath against Sacheverell, equalled him in his invectives. He called Sacheverell "an unaccountable wretch", a "bully-errant", "a Jacobite pulpit drummer." Sacheverell's hatred for the Dissenters he said, was "so inveterate (that like a true factor of the Prince of Darkness) he would send 'em to Hell by shoals." He had "a heart set on fire from Hell, a tongue dip'd in that infernal lake, and the impudence of the father of lies", etc., etc. - The bullbaiting, or Sach-ell dress'd up in fireworks. (1709).

(2) See above, p. 128.

altered situation into account and Sacheverell's outspokenness against the Low Churchmen, one can more easily understand why he was selected for public censure.

A summary of the sermon will show that Sacheverell's main concern was for the Church of England and that his reference to resistance at the Revolution was only subsidiary to his main theme.^①

(1) Although the sermon at the Derby Assizes was included in the indictment, only the dedication was referred to, and even that was ignored in the Trial.

II : The sermon.

Preaching on the perils of St Paul among false brethren, he drew a parallel between the church at Corinth and the Church of England.^① The Church of England, he said, was rent and divided by factions and schismatical impostors, and her doctrine corrupted and defiled. This was done not only by our professed enemies but by our pretended friends and false brethren.^②

He proposed to define a false brother in relation to the church, in relation to the state, and in relation to his fellow citizens. In church matters, Sacheverell attacked all who denied that episcopacy was of divine apostolical institution. He railed against those who would barter the Catholic doctrines of the Church of England for a "mongrel-union of all sects" and who would assert that separation from her communion was no schism, that schism was no damnable sin, that occasional

(1) S.T., xv, 73-75.

(2) Ibid., 75.

conformity was no hypocrisy. If "the modish and fashionable criterions of a true churchman", exclaimed Sacheverell, are compliance with Dissenters in both public and private affairs, promotions of their interests in elections, a defence of their tender consciences and piety, excuse of their separation from the Church of England and putting the blame on that church for carrying matters too high, then "God deliver us from such false brethren." ^①

In regard to the state, Sacheverell dealt with political obedience. He began by admitting

(1) S.T., xv, 76-78.

Sacheverell, in his defence, pleaded that the Toleration Act merely excused certain men from the penalties of the law. The act did not grant toleration in the sense that it recognised the lawfulness of schism. In justice to Sacheverell, it must be remembered that Burnet wrote : "The toleration does not at all justify their separation : it only takes away the force of penal laws against them : there, as lying, in common discourse, is still a sin, and ingratitude is a base thing, though there is no law against it : so separating from a national body as from the public worship, is certainly an ill thing... so that the toleration is only a freedom from punishment, and does not alter the nature of the thing." - Hist., vi, p.176.

that constitutions of different governments varied so that there could be no "one universal rule, as the scheme and measure of obedience, that may square to every one of them." But a maxim which must apply to all governments is that no innovation should be allowed in the fundamental constitution of any state without a very pressing and unavoidable necessity for it. Anyone who singly or in private capacity should attempt it, is a traitor to the state. These positions, which Sacheverell laid down, were quite in keeping with the doctrine of resistance. But, when he applied them to the English constitution, he did not disguise his attack on the Whigs. The constitution of both church and state, he said, were so contrived "to the mutual support and assistance of one another, that 'tis hard to say whether the doctrines of the Church of England contribute more to authorize and enforce our ~~our~~ civil laws, or our laws to maintain and defend the doctrines of our church." The constitution of one

cannot be altered without its having an effect on the constitution of the other.

"So that...whoever presumes to innovate, alter or misrepresent any point in the Articles of the faith of our church ought to be arraigned as a traitor to our state: heterodoxy in the doctrines of the one, naturally producing and almost certainly inferring rebellion and high treason in the other."

That this is not a "highflown-paradox" will be evident if we examine the doctrine of resistance.

"The grand security of our government, and the very pillar upon which it stands, is founded upon the steady belief of the subjects' obligation to an absolute and unconditional obedience to the supreme power, in all things lawful, and the utter illegality of resistance upon any pretence whatsoever."

But this doctrine of the church was now ridiculed "as an unfashionable, superannuated... dangerous tenet." Our new preachers and new politicians tell us that the doctrine is inconsistent with the right, liberty and property of the people who have invested in them the power to "cancel their allegiance at

pleasure, and call their sovereign to account for high treason against his subjects" and to dethrone and murder him for a criminal as they did with Charles I. Our enemies, said Sacheverell, think they can "effectually stop our mouths" by citing the Revolution in defence of the doctrine of resistance. "But certainly they are the greatest enemies of that, and his late majesty, and the most ungrateful for the deliverance, who endeavour to cast such black and odious colours upon both." William III disclaimed all right from resistance and a pamphlet which pleaded conquest, by which resistance was inferred, was burned. Parliament gave him the crown upon no other title but the vacancy of the throne, "so tender were they of the regal rights, and so averse to infringe the least tittle of our constitution."^①

Not only the republican faction but professed sons of the Church of England now justify the Rebellion of 1641, and in face of the doctrines of the church "manifestly defend the resistance of the supreme power, under a

(1) S.T., xv, 79-81.

new-fangled notion of self-defence."^① Sacheverell quoted Burnet as saying that if the right of deposition was to be allowed, it were better to be in the hands of the pope than of the people.^② God is the only ruler of princes. If the doctrine of resistance were allowed, "A prince...will be the breath of his subjects' nostrils, to be blown in, or out, at the caprice, and pleasure and a worse vassal than even the meanest of his guards."^③

Continuing, Sacheverell made a furious onslaught on the Dissenters' schools, which, under the shelter of the Toleration Act, cherished monsters and vipers in our bosoms, scattered their pestilence at noon-day, and thus threatened to undermine our constitution.^④

In the same forcible language, Sacheverell

(1) S.T., xv, 81. This was Hoadly's argument.

(2) Ibid., 82. The quotation from Burnet is in his Vindication of the Church of Scotland. (Glasgow, 1673, pp.68-69.)

(3) S.T., xv, 82.

(4) Ibid., 83.

went on to condemn toleration and latitudinarianism. He attacked "schismatics who would intrude upon us a wild negative idea of a national church, so as to incorporate themselves into a body, as true members of it ; whereas 'tis evident that this latitudinarian, heterogeneous mixture of all persons of what faith soever uniting in Protestantcy...would render it the most absurd, contradictory and self-inconsistent body in the world."⁽¹⁾ He launched a bitter tirade against comprehension which was attempted "within our memory" and which, if it had succeeded, would have turned "our house of prayer a den of thieves."⁽²⁾ He saw the Church of England ruined by her false brethren.⁽³⁾ Furthermore, comprehension is not only a danger to the church ; it is a danger to the state. For although these false brethren submit to the government, "their

(1) S.T., xv, 84.

(2) Ibid., 84.

(3) Ibid., 85. See Appendix I, Note 51.

obedience is forced and constrained, and therefore so treacherous and uncertain as never to be trusted, because proceeding upon no principle, but mere interest and ambition; and whenever that changes, their allegiance must follow it : and therefore (to use their own expression) are as much occasional loyalists to the state as they are occasional conformists to the church ; that is, they will betray either when it is in their power, and they think it for their advantage." ①

That their latitudinarian and rebellious principles will sting us to death is obvious from the treasonable reflections they publish on the queen's title. They deny that she has any hereditary right to the throne. They make her a creature of their own power, and tell us, that by the same principles they placed a crown on her head, they may reassume it at their pleasure. ②

(1) S.T., xv, 86.

(2) Ibid., 87.

III : The Trial.

In answer to the first article charged against him, Sacheverell replied that he did not cast black and odious colours upon his late majesty and the Revolution, but barely asserted "the utter illegality of resistance to the supreme power upon any pretence whatsoever : for which assertion he humbly conceives he hath the authority of the Church of England." He then quoted the words against rebellion in the Book of Homilies and pointed out, quite rightly, that they are affirmed in the Thirty-nine Articles to which he was, as a clergyman, required to subscribe by several acts of parliament, in particular, 13 Eliz., cap. 12, confirmed by 5 Anne, cap. 5. ^① "The said Henry Sacheverell doth with all humility

(1) S.T., xv, 42-43.

13 Eliz., cap. 12 was "An act for the ministers of the Church to be of sound religion." All ministers were required by the act to subscribe to the Articles of 1562. 5 Anne, cap. 5 was "An act for securing the Church of England as by law established." By this statute 13 Eliz., cap. 12 and 13 & 14 Car.2, cap. 4 "shall remain and be in full force for ever." The whole act was included in Article XXV of the Treaty of Union, 5 Anne, cap. 8.

Cf. above, p. 107.

aver the illegality of resistance on any pretence whatsoever to be the doctrine of the Church of England, and to have been the general opinion of our most orthodox and able divines, from the time of the Reformation to this day." ^①

In answer to the charge that he had suggested that William had disclaimed all right from resistance, Sacheverell replied that he had referred only to conquest. This was true, but he had used conquest and resistance as synonymous terms ^②, and, therefore, by pleading that there had been no conquest he was inferring that there had been no resistance. Sacheverell's reference to conquest in the sermon had been obscure, and his counsel, Harcourt, confessed that he could not easily comprehend

(1) S.T., xv, 43. Cf. above, chap. 1.

It must be admitted that Sacheverell was right. Cf. A defence of Dr Sacheverell; or passive obedience prov'd to be the doctrine of the Church of England, etc. (1710)

Cf. also The doctrine of passive obedience and non-resistance as established in the Church of England, etc. (1710)

(2) These two terms, as Sacheverell must have known, were not synonymous. See below, chap. 4, sect. 1.

it himself.^① But Sacheverell, by quibbling over the exact words he had used, could not evade the real meaning of the words as conveyed by the context. As the Solicitor-General (Sir Robert Eyre) said, his excuse was "a mere shift and evasion."^② He had upheld the view that the Convention had given the crown to William on the sole ground of the vacancy of the throne. It is quite obvious that Sacheverell, by supporting the Revolution and the doctrine of non-resistance at the same time, was insinuating that the Whig theory that the Revolution was based on resis-

(1) He pleaded that Sacheverell had expressed himself "in an obscure manner; I must confess, I can't easily comprehend him my self." - S.T., xv, 212. Harcourt adopted the explanation of the school of Lloyd. "The gentlemen of the House of Commons declare they mean the resistance of the subjects to their sovereign; but resistance, where the doctor mentions his late majesty to have disclaim'd it, cannot have that meaning: he was a sovereign prince, and might resist whom he pleased." - Ibid.

This was an extraordinary attitude to take. It contradicted Sacheverell's own explanation. And it contradicted his own assertion that there was resistance. Resistance was not admitted by the conquest school. See below, chap. 4, sect. 1.

(2) S.T., xv, 104.

tance was false.^① His first excuse, therefore, was that he had referred to conquest. His second excuse was much more ingenious. The people, he said, to whom he had referred as casting black and odious colours on the Revolution were not those who asserted resistance, but those who claimed that they had the right to call their sovereign to account for high treason against his subjects and to dethrone and murder him for a criminal. "Unless, therefore," said Sacheverell, "those who impute resistance to the Revolution, be the same with those new preachers and new politicians above specified, the said Henry Sacheverell affirms nothing concerning them."^② The prosecution did not do justice to this interpretation. The fact is that Sacheverell's description of the doctrine of resistance was a travesty, and the Whigs were bound to agree with him that those who used the Revolution to justify such extreme

(1) See Appendix I, Note 52.

(2) S.T., xv, 42.

views did, without doubt, cast black and odious colours on the Revolution. But, of course, however ingenious his explanation might be, it is obvious that Sacheverell had no desire to vindicate the doctrine of resistance. His sole aim was to blacken it by imputing to it the worst tenets that he could imagine. But he believed that if the prosecution accepted these two explanations, they could not charge him with denying resistance at the Revolution. In his reply, he would neither deny nor affirm resistance. Thus the Commons at least won a moral victory in the first round of the contest when Sacheverell would not clear himself by categorically stating that he believed that there was resistance.

The case for the prosecution depended on the acceptance of the fact that there was resistance in 1688. "Every one knows," said the Attorney-General (Sir J. Montague), "that knows anything of the Revolution, that the Prince of Orange came over hither with an armed force." ^① That there was resistance, said

(1) S.T., xv, 55.

Jekyll, is "a fact as clear as the sun at noonday."^① This 'fact', as we have seen, had not always been accepted by the Whigs themselves. But proof was not required, for the fact was not challenged by the defence. They admitted that there was resistance, but they differed, as we shall see, from the prosecution in the exact significance to be put upon that term.

Having asserted this fact, the Commons admitted that the issue of the trial depended on the acceptance of the single case of resistance at the Revolution. The managers for the House of Commons would not commit themselves to the enunciation of a general doctrine of resistance, but confined themselves to the particular case of resistance at the Revolution. Lechmere, Jekyll, Holland and Walpole, who were among the managers for the House of Commons, all stated emphatically that the laws and Homilies against rebellion were clear and were laid down in general terms. But the Revolution was a case of necessity and that

(1) S.T., xv, 100.

necessity was its justification.^① Holland practically accepted the doctrine of non-resistance by adopting the argument that exceptions are allowed to the most rigid rule.

"There is no law more positive and express than that which enjoins the observation of the Sabbath...But yet we know that necessity makes an allow'd exception to that general law...because the Sabbath was made for man, and not man for the Sabbath." ^②

Sir John Hawles went even further. He admitted that the doctrine of non-resistance was a Christian doctrine.^③ He agreed with the doctrine as set forth in the sermon.^④ But the Revolution was justified by acts passed by parliament, the supreme power in the state. Therefore Sacheverell must own the justice of the Revolution or resist the authority of these acts. For him the latter alternative ought to be untenable, it being inconsistent with the doctrine of

(1) See Appendix I, Note 53.

(2) S.T., xv, 111. Dee, Sacheverell's counsel, concurred in this opinion. Ibid., 239.

(3) Ibid., 119. It was actually older than Christianity, he said, for "it was as ancient as government, because it was impossible that government could subsist unless supported by its subjects." - Ibid., 119.

(4) Ibid., 120.

non-resistance.^①

On the fifth day of the trial, Harcourt opened the case for the defence. He began by making an admission.

"I admit," he said, "the doctor has in general terms asserted this proposition of the illegality of resistance to the supreme power on any pretence whatsoever."^②

But he hoped to show that the resistance at the Revolution was not inconsistent with this doctrine.^③ "And surely none can shew themselves truer friends to the Revolution than those who prove that the Revolution may stand without impeaching the doctrines of our church or any fundamental law of the kingdom."^④ So far were the defence from calling in question the justice of the Revolution, he said, that they looked on themselves to be arguing for it.^⑤

Harcourt, having admitted that there was resistance and that Sacheverell had preached the doctrine of non-resistance, adopted the

(1) See Appendix I, Note 54.

(2) S.T., xv, 119. (3) Ibid., 200.

(4) Ibid., 211. (5) Ibid., 200.

argument of the prosecution that there are exceptions to all general rules.

"'Tis objected by the prosecution if in no case whatsoever 'tis lawful to resist, 'twas then unlawful at the Revolution. Such a doctrine must be a slavish doctrine. An unlimited passive obedience is a slavish notion."^①

He hoped to show that Sacheverell could be proved guilty only if it were shown that he had stated explicitly that the Revolution was not such a case for exception.

He therefore defended Sacheverell on the grounds that he did not explicitly state that the Revolution was not such a case for justifiable exception.^② Sacheverell, in his speech on the eighth day of the trial, referred to the injustice of charging him with negative crimes - not for what he had said, but for what he had omitted to say.^③ His objection was not groundless, for Jekyll, in his reply, deliberately charged him with this omission.^④

(1) S.T.; xv, 201.

(2) See Appendix I, Note 55.

(3) See Appendix I, Note 56.

(4) See Appendix I, Note 57.

To recapitulate the evidence so far, we find that both sides admitted resistance in 1688, that it was an exceptional case, and justified only by necessity. The emphasis put upon the plea for exceptions to rules favoured the defence, for there was no need for the prosecution to adopt the argument unless they accepted the validity of the doctrine of non-resistance. But the point which must be stressed now is the fact that resistance was admitted, for when we consider what was meant by resistance, we find that ^{neither} the prosecution nor the defence required the exception argument. Not only was it superfluous, but it led to grave inconsistencies.

The point which we have now to consider is by far the most important. What was the constitution of the supreme power against which there might be or might not be resistance ? ^①

(1) Swift, writing to Peterborough in February, 1711, said : "This dispute would soon be ended, if the divines who write on each side, would plainly tell us what the object of this passive obedience is in our country." Quoted by Sir Walter Scott, in his edition of Swift's Works, xv, p. 423.

Speakers on both sides differed on what they thought Sacheverell meant himself by the phrase 'supreme power.' Hawles, for the prosecution, went so far as to say that Sacheverell did not define his meaning either in the sermons or in his answer.⁽¹⁾ That, at any rate, gave the defence an advantage. But for our purpose, there is more value in what the prosecution and defence thought Sacheverell meant than in what he actually did mean. A large part of the debate was to rest on their respective interpretations of supreme power.

The resistance, to which the Commons referred, was undoubtedly to James, that is, to the executive. The Attorney-General, therefore, in order to prove that Sacheverell condemned that resistance, said that the supreme power, against which Sacheverell maintained there could be no resistance, was the regal power.⁽²⁾ So far as there is any evidence in the sermon, Montague would appear to be right in his inference.⁽³⁾ If the regal power was the supreme

(1) S.T., xv, 119.

(2) Ibid., 55.

(3) Cf. above, p.159.

power, then Sacheverell was guilty of condemning the resistance used at the Revolution since he preached absolute non-resistance to the supreme power. But if the regal power was not the supreme power, then there was no connection between the condemnation of resistance to the supreme power and the resistance used in 1688.

Harcourt admitted that there was resistance in 1688, but not that there was any resistance to the supreme power. Of the resistance of which the Commons spoke, said Harcourt,

"The doctor has made no mention in his sermon; he has indeed affirm'd the utter illegality of resistance on any pretence whatsoever to the supreme power; but it can't be pretended there was any such resistance used at the Revolution; the supreme power in this kingdom is the legislative power, and the Revolution took effect by the Lords and Commons concurring and assisting in it." ^①

Lechmere^② and Hawles^③ both agreed that the supreme power in England was lodged in the

(1) S.T., xv, 196.

(2) Ibid., 61.

(3) Ibid., 119.

king-in-parliament. Lechmere said that if the executive endeavoured to subvert the government, the injured part of the constitution had the right to save itself.⁽¹⁾ He thus made the two statements : firstly, that the supreme power was parliament, and secondly, that the resistance at the Revolution was made to the executive. How, then, could he assert that the Revolution was an instance of resistance to the supreme power ?

Following Hawles, eight speakers supported the indictment without mentioning the meaning of supreme power. They at least avoided what was, for the prosecution, a delicate subject. How dangerous a topic it was was shown by the next speaker to mention this subject. Serjeant Parker, supporting the fourth Article, made a speech remarkable for its inconsistencies. On the assumption that Sacheverell was a Jacobite, he argued that Sacheverell had declared that all resistance

(1) S.T., xv, 61. Cf. Grotius, below, p.338. Defoe, arguing for the right of resistance, said that we had a right to resist James because he did not possess the supreme power. - A speech without doors. (1710) p.9.

to the supreme power was unlawful, but had insinuated that he did not thereby mean resistance to the queen. That is to say, Parker held that Sacheverell regarded parliament as the supreme power against which there could be no resistance, and that he regarded resistance to the executive as lawful. Sacheverell and the enemies of the queen, he said, will cling to this doctrine of non-resistance (against parliament) and condemn the resistance made against James (the executive) and any resistance that shall be made against the Pretender when he shall come.⁽¹⁾

Harcourt took special notice of this part of Serjeant Parker's speech. Parker, in his endeavour to infer that Sacheverell's sermon was an incitement to rebel against Queen Anne, suggested that Sacheverell insinuated that resistance to Anne, that is, the supreme executive power, was not illegal. But the resistance, which the Commons were justifying, was resistance to James. The Commons might argue that resistance to James was justified because

(1) S.T., xv, 177-178. See Appendix I, Note 58.

he was a tyrant, but unjustifiable when applied to Anne. But the distinction between the merits of James and Anne was beside the point when the question of right was the issue. Harcourt, therefore, was justified in declaring :

"But had he [Sacheverell] in express terms affirmed the unlawfulness of such resistance [to Anne] yet by the same arguments which have been used, the doctor would have been told he had been preaching a slavish doctrine." ①

Dodd, who spoke after Harcourt on Sacheverell's behalf, also maintained that the supreme power was parliament, and that, therefore, the propagation of the doctrine of non-resistance could be no reflection on the Revolution. The executive only had been resisted, and, consequently, the doctrine had not been violated. ②

The next speaker, Constantine Phipps, discussed the same question. He pointed out the inconsistencies in the speeches for the

(1) S.T., xv, 196.

(2) Ibid., 220.

prosecution, and the conflicting interpretations of supreme power, one speaker holding that it meant the executive, another that it meant parliament. He argued that the charges made by Montague and Parker could not both be true. Montague said that Sacheverell regarded the executive as the supreme power.^① If this were true, then Parker's objection that Sacheverell allowed resistance to Anne in favour of the Pretender,^② must fall to the ground. If, on the other hand, Parker's charge were the correct one, namely, that Sacheverell allowed resistance to the executive, then the first Article must be decided in his favour, for the resistance at the Revolution, on the assertion of the managers for the Commons themselves, was made to the executive.^③

So far Phipp's argument was sound, but he was unfortunate in the rest of his reasoning. He paraphrased Sacheverell's enunciation of the

(1) above, p. 173.

(2) above, p. 175.

(3) S.T., xv, 226.

doctrine of non-resistance as follows :

"An absolute and unconditional obedience to the laws made by the Queen, Lords and Commons in Parliament assembled, and the utter illegality of resisting such laws on any pretence whatsoever." ^①

This, said Phipps, is a universal truth and is an answer to all that has been said against Sacheverell on the first Article,

"for all the gentlemen have founded their discourse on a supposition, that the doctor preach'd up an absolute unconditional obedience to, and utter illegality of resistance of, the queen; whereas he preaches up the illegality of resisting the supreme power, and that in all things lawful." ^②

Phipps got badly entangled in his own argument. He himself had shown that his own statement, given above, had no foundation, because 'supreme power' had been interpreted both as executive and as legislature. ^③ Phipps said that even if Sacheverell did condemn resistance to the executive, he did not thereby reflect on the Revolution because James as executive had actually been resisted. To explain

(1) S.T., xv, 230. Had this been a true interpretation of Sacheverell's meaning, the Whigs could have had no quarrel with this statement. Cf. below, p. 294.

(2) Ibid., 230.

(3) above, p. 178.

this inconsistent statement, he deduced from Sacheverell's sermon the aphorism "That where the thing commanded by the supreme power is lawful, the resistance given to it must be unlawful."^① But James's commands before the Revolution were unlawful. Therefore, resistance to James was lawful.^② Unless Phipps meant that parliament could pass unlawful acts (and he nowhere makes such a suggestion) then he must have meant that all resistance to the legislature was unlawful. As an expression of personal opinion it is worthy of attention, but he had no warrant for inferring it was Sacheverell's opinion. For, Sacheverell had said : "An absolute and unconditional obedience to the supreme power in all things lawful, and the utter illegality of resistance upon any pretence whatsoever." Sacheverell, it will be seen, attached the word 'lawful' to 'obedience' not to 'resistance.' He meant, obviously,

(1) S.T., xv, 229.

(2) Ibid., 230.

active obedience to all things lawful, and passive obedience to all things unlawful, for the latter part of his statement precludes any right to resist whether the commands are lawful or unlawful.^① If Sacheverell had said that resistance to commands that were unlawful was lawful, then there was no occasion for Phipps to adopt the argument, as he did, that there are exceptions to all general rules.^② Phipps argued against himself when he did this. To plead that Sacheverell was "warranted in asserting such a general proposition [as the utter illegality of resistance on any pretence whatsoever] without mentioning the particular exception"^③ he contradicted his own thesis that Sacheverell had made the general exception that it is lawful to resist unlawful commands of the supreme power. And he further weakened his own argument by proceeding to a lengthy dissertation

(1) Jekyll pointed this out in his reply. S.T., xv, 383.

(2) Ibid., 230.

(3) Ibid., 230.

on the vindication of the doctrine of non-resistance and passive obedience in its extreme form as taught both before and after the Revolution.^①

On the eighth day of the trial Sacheverell spoke on his own behalf. In his speech he said :

"My Lords, the resistance...by me condemn'd, is no where by me applied to the Revolution; nor is it applicable to the case of the Revolution, the supreme power not being then resisted."^②

On the ninth day the Commons began their reply to the defence made on behalf of the prisoner. Sir Joseph Jekyll noted the concessions which the counsel for the defence had made.

"My Lords, the concessions are these, that necessity creates an exception to the general rule of submission to the prince, that such exception is understood or implied in the laws that require such submission, and that the case of the Revolution was a case of necessity."^③

These concessions, thought Jekyll, proved the success of the prosecution. But he also

(1) S.T., xv, 231 et seq.

(2) Ibid., 366.

(3) Ibid., 380.

maintained that they were extorted from Sacheverell in self-defence, and since they were not in the sermon, Sacheverell must be judged by what he preached.

By supreme power, said Jekyll, Sacheverell meant the executive power. "Now the Revolution is not, cannot be urg'd as an instance of the lawfulness of anything, but of resisting the supreme executive power acting in opposition to the laws." ^① The doctor in his speech to the Lords said that there was no resistance; therefore, he meant that there was no resistance to the executive power. The Commons say that there was; and thus, Sacheverell denies that there was resistance and thus condemns the Revolution. ^②

To sum up. It seems to us that the case against Sacheverell was 'not proven.' It is true ^hat Sacheverell in his sermon had spoken of the utter illegality of resistance against the supreme power on any pretence whatsoever.

(1) S.T., xv, 383.

(2) Ibid.

The defence admitted that there was resistance in 1688, and, therefore, the words taken at their face value did suggest Sacheverell's guilt. But the evidence led in the trial showed that the full implication of these phrases used by Sacheverell had to be examined. The words 'resistance' and 'supreme power' had to be defined. The Commons admitted, by implication, that the word 'resistance' had no absolute significance. It had a meaning only in relation to the phrase 'supreme power.' The prosecution could agree among themselves neither as to the locus of the supreme power nor as to what Sacheverell himself understood by that phrase. Phipps pointed out the weakness of the case for the prosecution very clearly and justly when he said :

"But whichever of these gentlemen your Lordships shall be of opinion is in the right, I beg leave to say, that this may certainly be concluded and inferr'd, that the construction of that sentence must be very doubtful, in which such learned men differ, and consequently cannot be a charge sufficient and certain enough to ground a conviction for high crimes and misdemeanours." (1)

(1) S.T., xv, 226-7.

The doctrine of non-resistance had meant non-resistance to the king who was the supreme power. It is clear, therefore, that Sacheverell and his counsel were putting a new interpretation on that doctrine by making the parliament the supreme power against which there could be no resistance. But the prosecution did not challenge this new interpretation. They made two concessions to the defence. Firstly, they virtually admitted the validity of a doctrine of non-resistance. This they did by arguing for exceptions to all general rules. There was no point in their pleading that the Revolution was an exception unless they meant it was an exception to some rule which condemned resistance, and that rule was the doctrine of non-resistance. Secondly, they admitted the new interpretation of the doctrine as relevant evidence. They accepted the defence's plea that resistance was a relative term and was applicable by the doctrine of non-resistance only to the supreme power. The prosecution, therefore, considered what Sacheverell meant by supreme power. And on this they could not agree. The

Attorney-General and Jekyll said that he meant by supreme power the king. Parker said he meant thereby the parliament. How, then, could the prosecution maintain that Sacheverell had condemned resistance to the supreme power when they could not agree among themselves what Sacheverell meant by that phrase ?

Furthermore, Hawles, for the prosecution, maintained that the supreme power was parliament. That was the argument of Harcourt, Dodd and Phipps. for the defence. And Sacheverell, in his reply, concurred with them., If, then, James was resisted and the supreme power was parliament, there was no resistance in its relative sense. There could be no connection between Sacheverell's doctrine of non-resistance and the resistance used in 1688. But the prosecution was not alone in this dilemma. The defence fell into as many inconsistencies as the prosecution. Their admission of resistance and their plea that it was a justifiable exception to the doctrine of non-resistance was inconsistent with their argument that there was no resistance in its relative sense and therefore

no breach of the doctrine. In fact, both sides became so entangled in the web of casuistry which they wove round the words used by Sacheverell in his sermon, that neither could escape its mesh with honour.

It might have been apparent to both friends and foes that Sacheverell cast black and odious colours on the Revolution and that he was therefore morally guilty. But we do not think that he was legally guilty according to the Whig 'law' by which he was being judged. It was a trial of party strength, and at the time the Whigs had a majority in both Houses. The Lords found him guilty, but only by a small majority and the majority insisted on a purely nominal sentence.

CHAPTER THREE (continued)

Section III : 1710 - 1714

CHAPTER THREE : SECTION THREE
1710-1714

The wisdom of the Whigs in impeaching Sacheverell has been much questioned. Burke heartily approved of the impeachment which, he said, afforded the Whigs with "the opportunity of a clear, authentic, recorded declaration of their political tenets" and in fixing "Whig principles as they had operated in the resistance to King James, and in the subsequent settlement."^① But it cannot be said that Burke's optimistic view was shared by Whigs at the time of the trial. The more cautious Whigs viewed the proceedings with misgivings.^② Outwardly, it looked as if the Tories had alone gained.^③ Calamy admitted that from the Whig point of view the trial was imprudent. He consoled himself, however, with the reflection that "after

(1) Burke, Appeal from the new to the old Whigs, etc. (1791) in Works, iii, pp. 43-44.
Cf. Appendix I, Note 59.

(2) See Appendix I, Note 60.

(3) See Appendix I, Note 61.

(4) An historical account of my own life, ii, pp. 223-4.

all, upon looking back we have this to satisfy us, that by means of the doctor's trial, our constitution was...asserted by our whole legislature, in opposition to slavish maxims and principles, which was most certainly some advantage."^①

The Tories did not regard the verdict of the trial as a condemnation of the doctrine of non-resistance. They were elated at Sacheverell's light sentence and he was received as a royal personage as he travelled across England. "The abdicated doctrine", said an observer, "reviv'd in an instant as if, like Antaeus, it had recover'd strength from being thrown to the ground."^② Hoadly was assailed more fiercely than ever and was branded as a preacher of

(1) Calamy, op. cit., p. 234.

(2) A letter to Sir J[oseph] B[anks] concerning the Minehead doctrine, etc. [By William Benson.] (1711) p. 2.

Cf. Matthew Tindal wrote : "Nay, tho one of the trumpeters of sedition is persecuted in a parliamentary way, yet that has had no other effect on his true brethren than to cause 'em to preach up with more fury than ever these Hellish doctrines." - The Jacobitism, perjury and popery of High-Church priests. (1710) p. 11.

rebellion.^①

Madan's bibliography^② of the Sacheverell pamphlets gives us some idea of the enormous interest in political philosophy aroused by the trial. Most of the pamphlets were written in defence of Sacheverell and the doctrine of non-resistance. There were few works of any moment published after 1710 in defence of the doctrine of resistance. Hoadly's most ambitious work The origin and institution of civil government appeared in that year. As it was the most ambitious, so it was also the most unconvincing, work written by Hoadly in defence of the Revolution. Hoadly thereafter retired into the background and did not come again into prominence till the Bangorian Controversy. The Tories felt their position to be so strong that they could afford to treat him with contempt.^③ Hoadly, in the work to which we have just referred, attacked Atterbury among

(1) Calamy, op. cit., ii, p. 236.

(2) Published in The Bibliographer, iii-iv, (1883)

(3) See, for example, Crispin the cobbler's confutation of Ben H--dly in an epistle to him. (1712)

others. Atterbury, though he had already been prominent in convocation disputes, now first definitely joined in the resistance controversy with a pamphlet called The voice of the people no voice of God.^① There were new writers, too, on the opposite side. Thomas Bradbury (though he had defended resistance earlier) came into prominence towards the close of Anne's reign with several pamphlets, the chief of which were Theocracy: the government of the Judges consider'd and applied to the Revolution (1712), The ass and the serpent (1712) and The lawfulness of resisting tyrants argued... in defence of the Revolution (1714). Steele, of whom little had been previously heard, appeared in defence of the Revolution in his Crisis (1714) which evoked a reply from Swift.^②

(1) Published in 1710. In his Mitre and the crown (1711) he said it was "heartily and readily granted" that "it be unlawful for subjects, of what order rank or degree soever clergy or laity, to take arms upon any pretence whatsoever, against their sovereign king or queen." pp. 4-5.

(2) The public spirit of the Whigs, set forth in their generous encouragement of the author of the Crisis, etc.

During the Tory ascendancy of 1710 to 1714, the doctrine of non-resistance returned to its extreme form, whereby the queen was exalted to the position of God's vicegerent - "The queen, the anointed of the Lord, the breath of our nostrils."^① With some notable exceptions, to which we shall refer presently, no attempt was now made to reconcile the doctrine of non-resistance with the Revolution, as it had been, for example, in the Sacheverell Trial. One pamphleteer, who was typical of many, argued for abdication; that there was no resistance in 1688; that the doctrine of non-resistance was the doctrine of the Gospels ("proved usque ad nauseam"); and that those who claimed for the people the fountain and original of power cast black and odious colours on the Revolution.^② The aspect of the doctrine which received chief attention in the closing years of Anne's reign

(1) William Tilly, A return to our former good old principles and practice, etc. (1710) p. 17.

(2) A true defence of Henry Sacheverell D.D. in a letter to Mr Dolbein. (1710)

was indefeasible hereditary right and was, consequently, closely bound up with the succession problem. It was no new phase of the teaching of the doctrine in Anne's reign, as we shall see later,^① but after 1710 it became the dominating one.

The extreme form of the doctrine of non-resistance now so assiduously propagated, led to a corresponding extreme form of the doctrine of resistance. Bradbury, to whom reference has been made, tended to justify even tyrannicide, a form of resistance which the Whigs had been careful to disavow. Furthermore, the Whigs had always been loathe to admit that James had been driven off the throne by an armed force, but now many boasted that the Revolution had been a military rebellion.

It is not surprising, therefore, that there was a reaction against both extreme forms. But the potency of the doctrine of non-resistance is demonstrated by the fact that the attempt to reconcile the opposing doctrines resulted in a modified form of non-resistance.

(1) See below, chap. 4, sect. 3.

When the Tories supplanted the Whigs in 1710, Swift was employed by Harley to defend the new Tory administration in the Examiner which had first appeared on August 3 of that year. Swift carried on for a year a most vigorous attack on the Whigs and the late Godolphin ministry. When the Tories were accused of being Jacobites, and abettors of arbitrary power, it is well to remember that both Harley and Swift^① had had leanings towards Whig politics. And while Swift condemned the Whig papers the Review and Observer, written respectively by Defoe and Tutchin, whom he calls "two stupid illiterate scribblers", he reserved his bitterest invectives for the Tory (and Jacobite) Rehearsal written by Leslie of whom he said : "His Rehearsal, and the rest of his political paper, are more pernicious than those of the former two."^②

(1) See Robert W. Babcock's Swift's conversion to the Tory party in University of Michigan Publications, Language and literature, viii, (1932) Mr Babcock overestimates Swift's acceptance of Tory principles.

(2) Examiner, No. 16, Nov. 16, 1710. In Swift's Works, ix, p. 85.

Swift, in his first number, complained that after the Revolution there began "the early practice" of "reproaching the clergy with the doctrine of divine right, passive obedience and non-resistance." This was an injustice to the clergy. The Whigs paint the Tories blacker than they are and "among all the reproaches which the Whigs have flung upon their adversaries, there is none hath done them more service than that of passive obedience, as they represent it, with the consequences of non-resistance, arbitrary power, indefeasible right, tyranny, popery and what not."^① Swift gives the doctrine as charged by the Whigs and as professed and practised by the Tories. According to Swift, the Whigs say that the doctrine of passive obedience means that a king holds his power from God and is answerable only to him. Such a king is above the law and the cruellest tyrant must be submitted to in all things. Even if his commands are unlawful, he cannot be resisted for that would be to resist God in the person of his vicegerent. The people were

(1) Examiner, No. 14, Nov. 2, 1710. Ibid., p. 75.

made for him, not he for the people. His next heir, though a fool or a madman must succeed, for he has a divine indefeasible hereditary right which no act of parliament can take from him. A king without this title, though he sits on the throne by act of parliament, is an usurper while there is anywhere in the world a person with an hereditary right.^①

This, said Swift, is what the Whigs accuse the Tories of believing. The Whigs will not allow anyone to affirm in general that ~~obed-~~^{passive obedience} ~~non-resistance~~ is due to the supreme power.^② On the other^{hand}, passive obedience, as professed by the Tories, is as follows.

The Tories think that in all governments there must be an absolute, unlimited supreme power to which passive obedience is due. This power rests with those who are entrusted with the making of laws. The legislature may pass or annul whatsoever laws it thinks fit and claim absolute obedience to them. In Eng-

(1) Examiner, No. 34 in Swift's Works, ix, pp. 216-7.

(2) Ibid., p. 218.

land this power is lodged in the king and the two houses of parliament. The executive power is solely in the king, and while he administers the laws passed by parliament he may in no case be resisted. The Tories further believe that this does not apply to a king who does not govern by law. He himself may not be resisted but his servants may. But should the king interpose his personal authority to support their insolence and illegality, then the people may resist him when they find no other remedy for their grievances. Even in this extremity there must be no violence done to the person of the king. That the Tories hold these views was demonstrated by the active part they took in the Revolution. "Yet they see no reason for entering upon so ungrateful a subject, or raising controversies upon it, as if we were in daily apprehension of tyranny, under the reign of so excellent a princess." As for the law of succession, the Tories think that hereditary right

is the best by its own nature and is most agreeable to our own constitution. But this right is defeasible by act of parliament, "which is a truth so manifest, that no man who understands the nature of government, can be in doubt concerning it."^①

Another writer who attempted to reconcile the resistance at the Revolution with the doctrine of non-resistance was the Rev. Benjamin Gatton.^② In a sermon published in 1711, he endeavoured to justify the Revolution without abandoning the doctrine of non-resistance in much the same way as Sacheverell's counsel and Swift had done. His analysis of rebellion is interesting. All resistance is against the laws or against the governors. The former is absolutely illegal, for although the laws may be unrighteous or oppressive they must be obeyed. Resistance against the governors may

(1) Examiner, No. 34, March 22, 1711 in Swift's Works, ix, pp. 218-9.

(2) The doctrine of non-resistance stated and vindicated.

be divided into two categories :- (1) legal. (2) hostile. The first means resistance through courts of law. The second itself may be divided into two classes :- (1) private. (2) public.^① Private resistance is absolutely unlawful for it is better for a few to suffer than a kingdom through the rebellion of the few.^② Public resistance, if it is offensive (i.e. if it invades the just prerogative of the governor or his life) is unlawful.^③ Public defensive resistance is alone lawful. This is justifiable when an oppressed nation takes up arms, not to invade the rights and prerogatives of their prince, but to maintain their own natural rights and legal privileges.^④ If a people cannot vindicate their rights even by force, the laws of every nation are of no force or value, but may be violated at the pleasure of an arbitrary prince. "But yet though such resistance as this, is, and may be lawful in extraordinary cases, it is an expedient never to be used, but in the utmost

(1) Op. cit., p. 6.

(3) Ibid., p. 8.

(2) Ibid., p. 7.

(4) Ibid., p. 9.

necessity, and when nothing less can secure the established constitution of a people."^①

This was the case at the Revolution. "They did not pretend to abridge the just prerogative of their prince."^②

It is obvious that the doctrine of non-resistance as outlined by Swift and Gatton is really the doctrine of resistance masquerading under another name. When we remember that Swift was employed by Harley to support the Tory ministry, Swift's analysis becomes very significant: for, what he wrote must be accepted as the official Tory point of view. The High-Church Tories, however, continued to propagate the doctrine in its extreme form, as we have pointed out. But the split in the Tory ranks, exemplified by the rivalry of Harley and Bolingbroke, showed that the extreme form as preached by Sacheverell did lead to Jacobitism. The Hanoverian Tories driven between Jacobitism and Whiggism, inclined towards the latter. At any rate, the Whigs could

(1) Ibid., p. 10.

(2) Ibid., p. 11.

claim a victory when they succeeded in forcing Swift and the moderate Tories to admit that resistance could, in some circumstances, be justifiable.

CHAPTER FOUR

The sovereign's title after 1689 according to the doctrines of non-resistance and resistance:-

- I. By conquest.
- II. By possession: De facto kingship.
- III. By hereditary right.



I. CONQUEST.

We have already seen that the Convention Parliament assiduously avoided the admission of any claim to depose James II.^① Parliament did not claim to be a government-making organ.^② We have also seen that the assertion that James had abdicated involved difficulties in settling who was his successor. Even if James's abdication was legal, was William his legal successor? Many, apart from the non-juring Jacobites, had grave doubts. The pitfalls of the abdication theory were avoided by the group of Williamites who asserted conquest. Their argument, as an answer to the non-jurors, appears to be the most plausible and unanswerable. The doctrine of non-resistance and passive obedience, taught by

(1) above pp.84-98 and pp.109-111.

(2) cf. Seeley, Introduction to political science (Eversley ed., 1896), p. 240.

the church and hitherto universally accepted by the body of Englishmen, was in no way violated. Loyalty to that doctrine was professed. We were bound not to resist James, but at the same time we were not bound to assist him.^① William, as a sovereign prince, was not bound by this doctrine; and, by the law of nations, he had the right, as a sovereign, to invade another sovereign in a just war. The Prince of Orange, said Bohun, "had a just cause to make war upon James II, and, if he was conquered by him, he has as good right to our allegiance on that score, as ever any conquering prince had."^② Even Robert Wynne, though he was not an advocate of the conquest theory, thought it an additional argument to add: "If in a just war, where the subjects are

(1) A pamphleteer scoffed at this distinction. "And yet when the late king was to fight that battel, which was the last throw for his crown, they fetch'd themselves off from danger with an admirable distinction, that their doctrine requir'd only a non-resisting, but not an assisting loyalty" - Plain English: or an inquiry concerning the real and pretended friends of the English monarchy. (1690). S.T.Wm. III, ii, p. 81.

(2) The doctrine of non-resistance ... in no way concerned, etc. S.T.Wm. III, i, p. 350.
See also Appendix I, Note 62.

not bound to assist their prince, he is brought to such circumstances as to be obliged to give satisfaction to the prince who brings his forces against him [and fails to give this satisfaction], in such a case ... his subjects' allegiance ceaseth."^① Edward Fowler wrote: "God doth sometimes confer the right of sovereignty, that is, by a Law of Nations, which establisheth such a right upon the success of a just war".^②

With this theory there was no necessity to assert the legality of James's abdication, or to deny the deposition of James. Whether James went away voluntarily or was forced, said Bohun, "is a question not worth a farthing at the bottom."^③ For, he added, "I suppose no man ever said or

(1) The case of the oaths stated (1689), S.T. . Wm.III, i, p. 344.

(2) An answer to the paper delivered by Mr Ashton at his execution (1691), S.T.Wm. III, ii, p. 106.
It is said that this pamphlet secured for Fowler the Bishopric of Worcester - D.N.B.

(3) Op. cit., p. 350.

thought he freely resigned the crown."^① If James did not resign the crown, had the people the right to deprive him of it? The answer to this awkward question was avoided by the counter-assertion that William deprived him lawfully in a just war. The English nation was not guilty of deposing their king. Was England, therefore, a conquered nation? Bishop Burnet, who preached the coronation sermon, disclaimed, on behalf of William, any right from conquest.^② His conquest was over James only, not over the people.

From the moment that the invitation to William was contemplated, it was realised that William might be regarded as a conqueror. For this

(1) Ibid.

Mr. Keith Feiling does not draw a clear distinction between the conquest and de facto schools of thought. He cites Bohun as a member of the de facto school. Nottingham did certainly belong to it and his appointment of Bohun as press licenser evidently led Mr. Feiling to make this mistake. He says: "The action of Edmund Bohun, the press licenser of Nottingham's appointment, in passing the pamphlet 'King William and Queen Mary conquerers', which preached the very de facto doctrines of which the Secretary was accused, reinforced the charge that Nottingham, by the very fact of holding such opinions, was unfitted to serve the crown." - History of the Tory party, p. 294.

The conquest school, to which Bohun belonged, made William de jure king.

(2) Referred to by Hampden, Some considerations about the proper way of raising money. S.T.Wm.III, ii, p. 311.

For Burnet's attitude to the conquest school, see Appendix I, Note 63.

reason, Sidney had urged that the number of his Dutch troops should be small. William insisted on bringing sufficient troops to ensure his own safety in case the English troops did not come over to his side. But he had no intention to, nor did he, claim the throne as a conqueror^①. He received the crown as a gift. His supporters who asserted conquest were fully aware that a theory which made England a conquered nation could not be acceptable. James could be deprived of his sovereignty only by a sovereign, which naturally inferred a foreign prince. William was the instrument in that act. But the conquest school hastened to point out that there was a difference between this act of sovereignty-deprivation and sovereignty-acquisition. Because William by the law of nations had wrested sovereignty from James, it did not follow that he had a right to possess

(1) William in his Second Declaration said: "And as the forces we have brought along with us, are utterly disproportionate to that wicked design of conquering the nation, etc."

himself of it. To Fowler, allegiance was due to the person in whom "the rights of sovereignty are placed by an extraordinary Act of Providence and the concurrent consent of the nation".^① He says: "We must distinguish between a right to the government and the manner of assuming it. The right was founded in the just cause of the war and the success of it; but assuming of it was not by any ways of force or violence, but by a free consent of the people, who by a voluntary recognition and their majesties acceptance of the government, as it is settled by our laws, take away any pretence to a conquest over the people or a government by force".^②

It was admitted, however, that in the case of conquest the people had no choice. They had, perforce, to accept the conqueror. Matthew Tindal, a disciple of Locke, attempted to avoid the 'conquered nation' corollary which followed

(1) An answer to the paper delivered by Mr. Ashton at his execution (1691), S.T.Wm.III, 11, p. 106.

(2) Ibid. p. 111.

from the theory of conquest. William, by freeing the people from their obligation to James, did not thereby get a right himself to their allegiance. "Nothing can give the conqueror right but their own consent".^①

However, he is forced to add: "The conquered may in a sense be said to be forced to what they did".^② They were under a moral necessity to submit to a government that could protect them and William alone could afford them that protection. We need not emphasise this compulsory consent. For even Locke realized that consent might only be tacit and that the main

(1) An essay concerning obedience to the supreme powers, etc. (1694), S.T.Wm.III, ii, p. 446.

The case of towns in Flanders constantly changing hands was frequently cited in pamphlets. The towns men were obliged to swear allegiance to each conqueror who could afford them protection. See Burnet's Pastoral letter, answered in Samuel Johnson's Notes on the phoenix edition of the Pastoral letter (1694) pp. 31-33; in Works (1710), p. 303.

(2) Ibid., p. 447.

issue was the ruler's recognition that his office was founded in the consent of the people.^①

We must notice, however, that a section of the conquest school did not base government on consent. One pamphleteer said that since laws of countries are subordinate to the laws of nations, a sovereign prince may acquire a just title to a throne by conquest, and therefore subjects must own that prince by the Law of Nations. "Nay", he continues, "the universal consent and practice of all nations, both of princes and people, have made this the standing law of all revolutions, to submit to the prevailing power even when there is no pretence of right, but only of force".^② Bishop Lloyd (whose pamphlet, God's way of disposing of kingdoms

(1) Fergusson, who anticipated Locke's contract theory, declared, that a conqueror had no right to the throne until the people "declare their submission to and acquiesce in him, upon the best terms which they can obtain and that he is willing to grant" - A brief justification S.T.Wm.III, i, p.136.

cf. Locke, Second Treatise, ii, §189.

(2) An enquiry into the nature and obligation of legal rights. S.T.Wm.III, ii, pp. 403-404.

(1691) was almost burned by Parliament^① because it asserted conquest) had no doubt about the acceptance of the conqueror. The king's "coming into power were so wholly of God", he wrote, "that the people had nothing to do, but to accept the choice of God, and to submit to it".^② Lloyd admitted, moreover, that a conquest might be unjust. The conqueror may be a usurper. "And if God gives no right to him whom he sets up, then it remains still in him whom he puts down: so that he is rightful king still, though he is out of possession and the other is but an usurper that is in possession".^③ The usurper, nevertheless, should be obeyed, because the people must be governed, and it is expedient that they should

(1) See below, p. 214.

(2) God's way of disposing of kingdoms, p. 10.
See Appendix I, Note 64.

(3) Ibid., p. 56. Perhaps it was this section of the pamphlet which saved it from being burned by Parliament. It does not make William de facto king and James still de jure. Since it can never be known whether God regards William as a usurper or not it cannot be said whether is de jure king or not.

accept a government that can protect them. We can see two reasons why Lloyd met with so much opposition from the bulk of Williamites. Firstly, in his view, a conqueror, although a usurper, ought to be obeyed. He did not state that, in his opinion, William was not a usurper. In fact, he inferred that he was by adopting the arguments of the de facto school. Secondly, in his view, William received none of his power from the people but wholly from God. "Sovereign princes and kings" he said, "even where they are chosen by the nation ... as they have their authority from God, so they are only accountable to him ... He alone makes kings by his sovereign power, and by the same he can unmake them when he pleases".^① Thus Lloyd still clung to the doctrine of the divine right of kings and the doctrine of non-resistance. He differed from the non-jurors only in his acceptance of William as the instrument of God's deliverance. He

(1) Op. cit., p. 19.

reversed the well-known dictum and made the voice of God the voice of the people.

Parliament seems to have taken into consideration the conquest theory only once. On January 21, 1693, the House of Lords discussed several books. The motion to burn Lloyd's Discourse of God's way of disposing of kingdoms fell. But both Burnet's Pastoral letter^① and Blount's King William and Queen Mary conquerors were ordered to be burnt by the common hangman. The House of Lords passed a resolution "That the assertion of King William's and Queen Mary's being King and Queen by conquest was highly injurious to their majesties, and inconsistent with the principles, on which their government is founded, and tending to the subversion of the rights of the people". The House of Commons concurred, adding the words "injurious to their majesties rightful title to the crown of this realm". The lower house desired the king to

(1) It was attacked by Samuel Johnson in his Notes on the phoenix edition of the Pastoral letter (1694).

remove Bohun from his office of licenser for licensing Blount's pamphlet.⁽¹⁾

What inferences can we draw from the conquest school relating to sovereignty? Firstly, sovereignty still resides in the king. Secondly, the king derives his sovereignty solely from God, not from the community. Thirdly, the king can lose his sovereignty only in one of two ways. He may lose it by direct providence of God. In this case, William was God's agent and as such acquired the sovereignty forfeited by James. He may, in the second place, lose it by the law of nations, for one sovereign prince can deprive another sovereign prince of his authority.

Quite clearly, the advocates for the conquest theory were adapting the divine right theory of kings to suit the circumstances of the Revolution. They were, to a certain extent, reverting to the sixteenth century theory which made any government of divine right. It was contrary to the amplified seventeenth century doctrine which included the hereditary qualification. James I

(1) Parl. Hist., V, 756.
cf. Sacheverell Trial, 8^o ed. 130. S.T.,
xv, 212.

in 1606 had declined to license the canons passed by convocation because the hereditary element in kingship had been omitted. If the king of Spain, said James, conquered England, the canons would justify Englishmen submitting to him. Archbishop Sancroft made a strategic blunder in 1690 when he published Bishop Overall's Convocation Book which contained these canons. Sancroft unwittingly put a weapon into the hands of his opponents. On Overall's authority, William ought to be accepted and the oath taken to him,^① though Sancroft himself did not take the advice and remained a non-juror. Lloyd's argument was the only one likely to win over the non-jurors. It maintained the doctrine of non-resistance, for, according to it, James had been resisted by William, not

(1) Sherlock when he finally decided to take the oaths found Overall a useful supporter. He was satisfied from chapter 28 of the Convocation Book that any government, when settled, ought to be obeyed "for conscience sake" - See The case of allegiance due to sovereign powers, etc. 2nd ed. Edin., 1691. p. 3.

"he was happily relieved by a lucky coincidence of Bishop Overall's canons" - Johnson, Notes on the phoenix edition of the Pastoral letter (1694), p. 50; in Works (1710), p. 307.

cf. below p.222, note 1, and p.235.

by his subjects. The stumbling block in the path of the non-jurors was not the illegality of resistance so much as hereditary right. That the conquest theory did not win over the non-jurors must be attributed to their personal attachment to James and to an over-scrupulous attitude to the oath of allegiance rather than to the doctrine of non-resistance.

The conquest school was probably small; at least we have not found many pamphlets giving it support.^① The theory was put forward immediately after the Revolution and had a very short life. It contributed nothing to a more rational understanding of sovereignty and the problem of the true foundations of government. Had the bulk of Englishmen who professed the doctrine of divine right before the Revolution (and they constituted practically the whole nation) accepted the conquest interpretation

(1) But cf. Burnet, who says that the theory had a great effect among the clergy, "and brought off the greatest number of those who came in honestly to the new government". (*Hist.*, iii, p. 382.) He repeats the same view later. (*Ibid.*, p. 384.)

Samuel Johnson said: "This conquest is continually alledged both in and out of the pulpit as a motive for swearing" - Notes on the phoenix edition of the Pastoral letter (1694), p. 40; in Works (1710), p. 305.

of the Revolution we would have had a theory of government which did not coincide with the facts; and another revolution might have been required before the modern interpretation of the state and of sovereignty would have found a place in our political philosophy.

It is worth noting, as a significant commentary on the trend of thought, that some men, who professed this line of reasoning, found it expedient to introduce the element of consent and resistance.

There is, however, one aspect of the conquest theory which requires special notice. Its upholders could not be Jacobites. They avoided the dilemma in which the de facto theorists found themselves. The latter could take the oath of allegiance to William as lawful king but not as rightful king and they exemplified this attitude by resisting the passing of abjuration bills. The conquest theorists made William de jure king by right of his conquest over James, William having such a right by reason of his being a sovereign prince. It followed that James could have no similar right to win back his inheritance by right of conquest since James could

no longer claim to be a sovereign prince.

The conquest school denied the right of a people to settle its own government internally. Presumably William could lose in turn his acquired sovereignty only at the hands of a foreign sovereign prince. Until he was so conquered, his subjects must render him absolute obedience and consequently the doctrine of non-resistance was still to be the measure of man's political obedience.⁽¹⁾

(1) Samuel Johnson said: "Calling in Providence to decide a title ... is to employ the Majesty of Heaven in undersheriffy". - Notes on the phoenix edition of the Pastoral letter (1694), p. 7: in Works (1710), p. 297.

For Speaker Onslow's note on the conquest theory, see Appendix II, Note 65.

CHAPTER FOUR (continued)

II. By possession : De facto kingship.

II. By possession: De facto kingship.

The conquest theory of the Revolution which we considered in the last section was never popular and made few converts. It soon passed out of the realm of practical politics. The theory which dominated the political philosophy of William's reign was the de facto theory of kingship, just as the dominant issue in Anne's reign was the contest between the hereditary and parliamentary basis of kingship.

At the outset it must be observed that the theory was a political expedient advocated with the definitely practical object of persuading non-jurors to take the oath of allegiance to William. The main theme of all the writers of this school was expediency. Many of the most prominent non-jurors had either actively assisted in, or at least connived at, the banishment of James. To keep out that popish prince seemed

to the majority of Englishmen the most vital issue in politics. Why should Protestants - most of them divines of the Church of England - threaten the stability of William's government by refusing to take the oath of allegiance to him? They refused the oaths not because they desired to see James once again on the throne of his fathers but simply because their consciences forbade them to take to a new king an oath which seemed to conflict with an oath to the old. Those who pleaded with the nonjurors on behalf of allegiance to William were willing for the sake of peace at home in the realm of practical politics to waive aside as irrelevant the claims of James. To take the oath to William ought not to imply the denial of James's right. Thus William's claim was allowed to be only by law.^① A converted

(1) But although Sherlock recognised William as de facto king, he did not admit that he was 'lawful' king. He seems to distinguish between a legal and a legitimist king but to give neither title to William. By de facto was usually meant legal; by de jure legitimist.

Sherlock said St. Paul (Romans, xiii) did not forbid allegiance to a usurper; which implied that he considered William as such. See The case of allegiance due to sovereign powers, etc. cf. above, p.216, note 1, and below, p.235.

non-juror might recognise William and strengthen the cause of the Protestant succession (whose interest, it was believed, he really had at heart) while at the same time holding his private opinion as to James's 'right'. The success of the de facto theorists' campaign depended entirely on the shelving of the question of right and it is apparent from the debates in Parliament that they hotly resented the intrusion of right into any consideration of William's claim to the throne.

It was a time of great anxiety for ardent followers of William. Jacobite plots were numerous and were of monotonous frequency in William's reign. Men in positions of trust round the throne were corresponding with James. Men like Marlborough and even Shrewsbury (one of William's favourites) had dealings with St. Germain. Security at home and a united front to Europe were the watchwords of the de facto school. In a time of anxiety and internal unrest, expediency was the true ideal of the enlightened statesman. It often forced into the background

of men's thoughts well-reasoned principles of politics and the urgency of everyday affairs overshadowed the fundamental principles which were, nevertheless, guiding men's actions in consolidating the Revolution Settlement. Therefore we must bear in mind these practical considerations when we analyse the writings of the de facto school, and while remembering the occasional nature of their pleadings, endeavour, nevertheless, to trace the general stream of political philosophy running through the tangled forest of everyday affairs.

Their endeavours to strengthen William's government by winning over the non-jurors was well-meant. But it must be confessed that they failed.^① The de facto theory was a political strategy which could be justified only by success. That single condition of its justification being wanting, it was fortunate that more and more attention was given both inside and outside parliament to the question of William's right.

(1) The Whigs accused the clergy of being virtual non-jurors. There are few non-jurors, said one writer, because most of the clergy have taken the oath to William as de facto not de jure - A dialogue betwixt Whig and Tory, alias Williamite and Jacobite (1692), S.T.Wm.III, ii, p. 379.

The oath was altered to make it conform, as it was thought, to actual facts.^① As long as William's right was doubtful, the oath should be simple - "to the ancient simplicity of swearing to bear faith and true allegiance to the king and queen," because "it was ... judged just and reasonable, in the beginning of a new government, to make the oaths as general and comprehensive as might be: for it was thought, that those who once took the oaths to the government would be after that faithful and true to it".^② These are the words of Burnet. He was evidently satisfied that William's title should not be closely examined. He does not attempt to vindicate William's right. He, it would seem, went no further than a recognition of William as de facto.^③ His whole allegiance, however, was for William,

(1) cf. above, Chap. 3, sect. 1, pp. 99-103.

(2) Burnet, Hist., iii, pp. 380-381.

(3) See Burnet's Pastoral letter and Samuel Johnson's reply to it, Notes on the phoenix edition of the Pastoral letter (1694).

and he condemned those who divided their allegiance between William and James. "The sense many put upon themth [the oaths], he said "was, that they were only to obey them as usurpers, during their usurpation, and that therefore, as long as they continued in quiet possession, they were bound to bear them and to submit to them: but that it was still lawful for them to assist king James, if he should come to recover his crown, and that they might act and talk all they could, or durst, in his favour, as being still their king de jure. This was contrary to the plain meaning of the words ... Yet it became too visible, that many in the nation, and particularly among the clergy, took the oath in this sense, to the great reproach of the profession ... The truth was, the greatest part of the clergy had entangled themselves so far with those strange conceits of the divine right of monarchy and the unlawfulness

of resistance in any case".^①

In 1713 Harbin^② wrote: "The Revolution ... was begun and ended on these grounds, that allegiance was not due to all kings in possession: that king James was lawfully depriv'd; that king William and queen Mary were lawfully put in possession. But these positions did not suit with the principles of many lawyers and divines, who had constantly maintain'd that the deposition of a lawful king was absolutely unlawful by the law of God and the law of this kingdom. Therefore to justify the translation of their allegiance, the former opinion that was buried at the Restoration^③ was reviv'd, viz. that allegiance was due to all powers in possession and many eminent members of the Church of England receiv'd it as consistent with the

(1) Burnet, Hist., iii, p. 381.

The clergy tried "to cheat their own consciences with a ridiculous and foolish distinction of taking the oaths to a king *de facto* but not *de jure*". De facto means "in downright English, downright 'usurpers'". - A modest enquiry into the causes of the present disasters in England, etc. (1690) S.T.Wm.III, ii, pp. 97-98.

(2) George Harbin was a nonjuror. He was chaplain to Francis Turner, Bishop of Ely, and an intimate friend of Bishop Ken. - D.N.B.

(3) cf. above, p.29 and note 1.

doctrine of non-resistance."^① He referred to Stillingfleet's The unreasonableness of a new separation and Sherlock's Case of allegiance. These, he said, were satisfactorily answered, and "no reply of moment being made, that controversy seem'd to be buried again, but of late it hath had a second resurrection. The Rev. Dr. Higdin^② thought fit, after many years of satisfaction, to examine the dispute again".^③ Higdin's work, to which he referred, was A view of the English constitution with respect to the

(1) Harbin, The hereditary right of the crown of England asserted, p. 2.

Calamy says: "Though but a single person appeared concerned in drawing up this book yet it was generally thought to contain the utmost strength of the most learned of the Jacobite party. The performance was much cried up, and the book dispersed with great industry and many copies were given gratis to men in power. Yet it was obvious to every reader, that the grand design of it was to put by the Hanover succession and pave the way for a popish pretender to the throne". - An historical account of my own life, ii, pp.268-9.

(2) William Higdin at first refused to take the oaths, but he eventually conformed and published, in order to justify himself, A view of the English constitution, (1709) and A defence of the view, (1710). Hearne thought that Harbin had the better of the argument. He said: "Nor is the government like to thank him for his performance, since he resolves all into possession, and makes all usurpers have a title to allegiance, not excepting Oliver himself". Higdin died in 1715. - D.N.B.

~~(3) See below, chap.~~

sovereign authority of the prince, published in 1709.

This retrospective commentary by a contemporary is instructive. But Harbin was undoubtedly wrong in supposing that the dispute had been settled in the early nineties in favour of hereditary succession.

John Hampden writing in November, 1692, took a census of opinion which is illuminating in that it no doubt gives a true picture of the confusion of thought which the Revolution had wrought in most minds. "We are all entirely unsettled as to the government" he wrote.^① "The king's title, and the legality of it, are as publickly disputed and with as little fear of punishment as any point of natural philosophy in the schools of Oxford, or any moot case of law by the students in the

(1) The same complaint was made a year later by Prideaux. "The government seems now to be brought to a kind of anarchy: nothing can long stand upon such a bottom of confusion: we must again tack about to our old constitution or be lost" - Letters of Humphrey Prideaux to John Ellis. (Dec. 25, 1693). Camden Soc. N.S. 15. p. 163.

Temple ... They will suffer no mention to be made of the original contract broken by King James, nor of that new contract made by King William with this nation in virtue whereof he is this day King of England. But instead of this, they write books and publish them, one while to prove that he is King by an immediate providence of God, and direction from him ... There have been Bills and declarations offer'd several times in Parliament for abjuring King James' authority and declaring King William and Queen Mary lawful and rightful king and queen of this realm; but nothing of this kind has ever yet been brought to perfection ^① ... 'Tis astonishing to think, that the officers in the chiefest trusts of the nation are not oblig'd to own this a lawful government as it is declar'd and asserted to be in the Bill of Rights ... several of those who have now the greatest employments and highest trusts

(1) This is not quite accurate. See below, p.245.

in the kingdom did, both before and after the time of presenting the crown to their majesties, openly declare and maintain it as their opinion, that their majesties were not, nor could be made lawful king and queen, but were only so de facto and as such they submitted to them and no otherwise".^①

Even before the debates were concluded in the Convention, some men had made up their minds to accept William on the basis of a de facto kingship.^② Nottingham, made Secretary of State in 1689, belonged to this school. He told Burnet "that, though he could not agree to the making a king as things stood, yet if he found one made, he would be more faithful to him, than those that made him

(1) Hampden, Some short considerations concerning the state of the nation (1692), - S.T.Wm.III, ii, pp. 324-5.

Somers had said in the House of Commons on May 1, 1690: "There are some opinions in the world, that the king is only de facto - You have declared him king of right - But if you look on printed books abroad, he is made only king de facto, and king in possession - I took the oath in another sense, whatever others did". (Grey's Debates, x, p. 103.)

(2) Burnet, Hist., iii, p. 357. In his speech against Sacheverell he said: "The notion of a king de facto, which is but a softer word for an usurper, came into vogue". - S.T., xv, 491.

could be according to their own principles".^①
The more we examine the resolution of 28 January 1689 in the Convention, the more we realize that it contained nothing but glittering generalities calculated, as Macaulay^② rightly said, to appeal to all shades of opinion. It was a bundle of inconsistencies and one man might agree with one part and another man with another. It served its immediate purpose of securing a majority in the Convention in favour of the election of William and Mary. But it did not provide a logical explanation of the basis of the new government.

(1) Burnet, Hist., iii, p. 357.

Johnson probably refers to Nottingham when he says "But my soul abhors above all those ... could creepingly come off with this excuse, That though they could not tell how to make a king, yet they knew how to obey a king; and have ever since vouchsafed to take his money in places of the greatest trust and profit" - An argument proving, etc. 4th ed. (1694), pp. 35-36; in Works (1710), p. 270.

(2) Hist., iii, p. 1277.

As we have seen the theory of the contract was not carried to its logical conclusion.^① The same may be said of the clause referring to abdication. Somers, who is held responsible for the framing of that resolution, deduced from it that William was de jure king.^② But the prevailing opinion seems to have been that the conclusions arrived at by the Convention did not warrant the assumption that William was de jure king. The Convention when turned into a parliament did pass a bill^③ in which William's right was recognised, but no one was required by the new oath of allegiance to swear it.^④ The word lawful^⑤ was left out of the oath "and", said one writer "it looks as if this was done de industria for the same reason, namely,

(1) See above, chap. 3, sect. 1.

(2) Grey's Debates, x, p. 103.

(3) cf. below, p. 245.

(4) For the wording of the oath, see above, p. 101.

(5) The words 'lawful' and 'rightful' were constantly interchanged without any exact meaning being attached to them.

that such as take the oaths might not think themselves bound thereby to be solicitous about the title to the crown".^① Perhaps this writer is referred to, when another pamphleteer says:

"As was lately well observed, the Parliament had avoided all occasion of offence consistent with the security of the government; for by omitting the assertory part of the former, 'tis evident they do not require us by this oath to assert the title but to secure the possession and peace of the crown in King William and Queen Mary by our obedience according to law". "It is neither requir'd that we should abjure the title of the late king, nor assert the title of the present".^②

When Parliament showed itself so timorous about asserting William's right, it is not surprising that out of doors this lead should be followed up by pamphleteers. The abdication theory was forgotten, to be revived later by High Churchmen like Leslie^③, Sacheverell^④ and Harbin.

(1) Obedience due to the present king notwithstanding our oaths to the former - Som. T., x, p. 298.

Samuel Johnson scoffed at this blind acceptance of a king "at that ridiculous rate as no countryman will buy a pig" - An argument proving, etc. 4th ed. (1694), p. 12; in Works (1710), p. 262.

(2) Agreement betwixt the present and former governments - S.T.Wm.III, i, p. 430.

(3) cf. ~~below~~, above, p.116.

(4) Sach. Trial, p. 80. S.T., xv, 81.

The de facto interpretation is expressed in the following passage:

"There is nothing in the laws of the land, or the word of God, that necessitates the subject to trouble his conscience with scruples about the title of princes, or beyond the actual possession and administration of the government".^①

D Dr. Sherlock who took the oaths, having for some time refused, advised men to follow his example. His apologia is to be found in his Case of Allegiance, the keynote of which is the following sentence: "I do not dispute the legal right of James which is nothing to my present purpose".^② Allegiance is due, says Sherlock,

(1) Agreement betwixt the present and former governments - S.T.Wm.III, i, p. 428.

(2) Case of allegiance due to sovereign powers stated (1691), p. 32.

Sherlock, for his conversion, was subjected to the grossest abuse. cf. "The renown'd dean of St. Paul's was not inferior to any for a political squeamish conscience. He could not dispense with oaths upon King William's first accession to the throne. King James has got an army in Ireland, the chance of war was uncertain and the doctor knew not which king might prevail ... that unfortunate prince was defeated at the Boyne, he fled back to France and there was no more prospect of his return - How could a Tory conscience hold out any longer? The sword had cut the Gordian knot, which held the doctor, his eyes were open'd at that moment" etc. - Tories and Tory principles ruinous to both prince and people (1714), p. 80.

cf. Macaulay, Hist. of Eng., iv, pp. 2012-2018.

only to the regnant king. In scripture we are commanded to obey the powers in being.^① To refuse the oath to William is to disobey a scriptural injunction. Furthermore, allegiance is due to the regnant king by the law of England. No one could deny that William and Mary were de facto king and queen. Hence it followed, according to this author, that "we owe them obedience due by law, for then we are their subjects and we cannot conceive of sovereignty without authority; nor of subjection without obedience".^② For a legal proof of his statement he cited the statutes of 25 Edward III and II Henry VII and cited in support Coke and Hales.^③ Coke held that the Statute of Treason applied only to a de facto king^④ and this ruling was not questioned by any party in our period. "If treason

(1) Case of allegiance, p. 433. cf. above, p. 216, note 1, and p. 222, note 1.

(2) Ibid., p. 428.

(3) Ibid., p. 428.

(4) Whether de jure as well or not.

cannot be committed against the king that is out of possession, as he is not king according to law; so we cannot be thought to owe him our allegiance, that is, obedience according to law, for he is not king so as to rule or command us".⁽¹⁾

The citation of the Statute of Treason occurs with monotonous repetition in the pamphlets of the day. It is necessary therefore, to consider whether or not that statute was a convincing argument against the non-jurors.

Firstly, the statute of Treason enacts, inter alia, that any one (not being an inamicus⁽²⁾) who (a) imagines the de facto king's death, (b) levies war against the king, (c) adheres to the king's enemies, is guilty of treason. To do any of these things against a king out of possession is not treason. The statute II Henry VII merely states that anyone who actively assists the de facto king will not be liable to impeachment or attainder at the instance of a parliament under a king, who, at the time of

(1) Ibid., p. 428.

(2) An inamicus was subject to martial law.

such assistance being given, was a de jure king but out of possession.

Secondly, the treason law applied to any one living in England, (not being an inimicus) who committed overt acts against the crown. It in no way affected the man who refused to take an oath of allegiance. The law dealt solely with acts committed by a man owing local allegiance. Anyone enjoying the king's protection could be indicted for treason whether he had taken an oath of allegiance or not.

The nonjurors fully appreciated these limitations in the application of the treason laws. They hastened to retort that they were perfectly aware that if they were caught pursuing treasonable designs against William they would be liable to suffer under 25 Ed. III. Only overt acts constituted treason. Was it treason, therefore, for a man to elect to resign a bishopric or military or civil office rather than take the oath?

The fictitious Mr. Meanwell in James Tyrrell's Bibliotheca Politica asserted that

he was willing to pay the same allegiance as a foreigner would who was dwelling in this country. "That, the bare protection of a government", he said, "does not give it an absolute right to the allegiance of all those that enjoy their protection, I think may be sufficiently proved from the instance of a Frenchman, or any other foreigner, who, tho' by living here and enjoying the common protection of the government, I grant he is obliged to be obedient to its laws and not to act or conspire against it; yet this does not discharge him from his natural allegiance which he still owes to his former prince".⁽¹⁾

It must be conceded that those who used the treason law argument were adequately answered by the nonjurors' assertion that nothing was involved in that argument except local allegiance which they were willing to pay to William. It was no relief to their consciences to be told that it was not treasonable to take an oath to

(1) Op. cit., p. 684.

a de facto king. William might be king of England by positive law, but he was not king by the law of God. The peaceable non-jurors wished to remain passive. They would neither oppose nor help William. In practice they might be harmless law-abiding citizens, but their principles contained the seeds of sedition; for, the case of the Frenchman living in England, cited by Meanwell, was not so simple as he would have made it. That Frenchman, it is true, owed temporary local allegiance to William while he enjoyed his protection, but he also owed permanent allegiance to Louis XIV, To whom, then, did Meanwell owe this permanent allegiance? To James II, undoubtedly. And it must be allowed that so long as the supporters of William based their allegiance on de facto kingship only, they implied that someone else might have a de jure right. They argued that the question of someone's else's right was beside the point. But, logically, the only difference between the de facto theorists and

the non-jurors was that the former turned their eyes away from, and the latter turned them towards, James. Powel, Master of the Rolls, said in the House of Commons in the debate on the Abjuration Bill (April 26, 1690): "'A king de facto and a king de jure' - Whoever mentions the de facto implies another de jure. There are two allegiances in that case, and therefore fit to stick to one. To obey the king de facto is no other than to obey till I have power to rebell."^①

The de facto theory was founded on expediency, not on principle. The whole-hearted supporters of the Revolution régime came to regard the de facto adherents as Jacobites in disguise. A writer, early in William's reign, said that there were very few of the disaffected clergy that had the courage to lay down their places for the oaths, so they cheated the world and their own consciences, "with a ridiculous and foolish distinction" of taking the oaths to a king de facto, but not de jure. This distinction was made to salve their own consciences,

(1) Grey's Debates, x, p. 86.

and to impress upon the minds of the people, that William and Mary were not lawful and rightful king and queen of England, but de facto only, "that is, in plain English, downright usurpers" ... And indeed, "What" he asked, "could be more efficacious, to alienate the hearts of the people from their majesties, than either to suppose them king and queen de facto only, or to buzz into peoples' ears, that in swearing allegiance to them, they thereby acknowledged no lawful right to the crown to be in their persons?" ⁽¹⁾

The de facto school did not accept the finality of the Revolution. They should not be blamed for hesitating to give an unqualified approval of all the steps taken in 1688/9. It is not to be wondered that some men, while accepting William and the verdict of Parliament, should decline to go further than the bare acceptance of William. Sherlock rightly said that to justify the legality of the Revolution

(1) A modest inquiry into the causes of the present disasters in England, etc. - S.T.Wm. III, ii, pp. 97-8.

"requires such perfect skill in law and history and the constitution of the English government that few men are capable of making so plain and certain a judgment of it, as to be a clear and safe rule of conscience".^① This point was made clear when an abjuration bill was proposed in Parliament. Its rejection proved that the oath of allegiance had been explicitly worded so as to exclude the question of right; for, had an abjuration bill passed requiring the rejection of James's right, the oath of allegiance would thereby have come to imply William's right. The opponents of the bill argued that it could not strengthen the oath of allegiance. It could only create hypocrites or reduce the number of those taking the oath of allegiance.^②

Humphrey Prideaux, Dean of Norwich, in a letter to John Ellis, December 4, 1693, explained his scruples about an abjuration oath. He had taken the oath to William as lawful king

(1) Case of allegiance, p. 2.

(2) The case of an oath of abjuration considered, etc. (1693).

but he would refuse an oath of abjuration which would thereby imply that he owned William's right. William's right, he said, "may be good so far as I know: but before he can have a right and title, King James must have lost his, and of this we must be well assured before we can swear to the right of the other". A man may be lawful possessor without having a just title. He did not doubt that Parliament could make William king. By that authority he was lawful king. But was Parliament's decision right? "Whether the states did this rightfully still remains a question which I wish may never be proposed to be examined. It's certain many that the oath will be imposed upon can never do it so far as to make a satisfactory judgment upon it".^①

(1) Letters of Humphrey Prideaux to John Ellis, 1674-1722. Ed. by E. Maunde Thompson. Camden Soc., N.S.15. 1875., pp. 157-9.

When the abjuration bill was again brought up in 1702, Nottingham opposed it. Such distinctions as the bill proposed, he said, were against "the terms of our submission to his majesty and upon which his majesty was pleased to accept the crown".^①

The disputes over the words lawful and rightful continued from time to time in Parliament. In April, 1690, the Duke of Bolton brought in a bill to recognise William and Mary as 'rightful and lawful' sovereigns.^② The House of Commons, with a Tory majority, passed the bill; "to the wonder (says) Burnet) of all the people, it passed in two days in that House without any debate or opposition".^③ He suggested that this may have been owing to parliamentary tactics of of the Whigs, especially of Somers.^④ Burnet's

(1) Rogers's Protests of the House of Lords, 24th Feb. 1702. cf. Feiling, History of the Tory party, p. 261.

(2) Grey's Debates, x, pp. 45-52.

(3) Burnet's Hist., iv, p. 73.

(4) Ibid.

explanation seems to be the only feasible one, for it is incredible that the bill recognising William's right could represent the true feeling of the Tory party. We have seen that 'right' was excluded from the oath of allegiance, and the abjuration bill in 1690 which would have implied right was rejected. And it is said that no attempt was made to suppress the numerous pamphlets propagating the de facto doctrine of kingship.^① The Jacobite conspiracies, however, and the plots to assassinate William strengthened the view that the policy of attempting to divide one's allegiance between James and William was dangerous. A more pronounced leaning towards a recognition of William's right was the result. In the Association drawn up by the Commons in February 1696 after William's announcement of the assassination plot, we find these words:

"We, whose names are hereunto subscribed,
do heartily, sincerely and solemnly

(1) See Hampden's evidence, above, p.229.

profess, testify and declare, that his present majesty king William is rightful and lawful king of these realms".^①

In the Association as drawn up by the House of Lords, the word 'rightful' was omitted. On Rochester's suggestion it was stated "that king William hath the right by law to the crown of those realms; and that neither James, nor the pretended Prince of Wales nor any other person, hath any right whatsoever to the same". A recent writer, quoting the single phrase 'the right by law' comments: "The difference, if finely shaded, was a perfectly intelligible one".^② This would be true of that single phrase. But it might be justly argued that the distinction made in that clause was nullified by the concluding words that deny that James, the Prince of Wales, or any other person "hath any right whatsoever" which must mean that they do not have even a divine or indefeasible hereditary

(1) Parl. hist., v, 992. 92 members of the Commons and 15 peers refused to sign the Association. Ibid., 993.

(2) Feiling, History of the Tory party, p.319.

right.⁽¹⁾ As we have seen, Prideaux argued that a man was lawful possessor if so adjudged by a competent legal authority: but the judgment might be unjust though legal, and men were entitled to their private opinions that it was wrong. It would be fair to require them to admit the 'lawfulness' but unfair to make them hypocrites by making them own, against their consciences, the 'rightfulness'. The use of the word 'right' cut the ground away from the feet of the de facto school. It seems to us that Rochester induced the House of Lords to go further than the Commons, although Rochester's career would not warrant us believing that he had this intention.

Following on the debates over the Association, Parliament passed and William gave his royal assent, in the same session, to a bill wherein it was provided "to inflict a penalty on such as shall by writing, or otherwise declare that king William is not lawful and

(1) On a Tory interpretation of right, See below, p.255, note 1.

rightful king of these realms".⁽¹⁾

The abjuration bill of 1702 marks the triumph of those who maintained the right of William and of Anne: of the former directly on the justice of the Revolution, of the latter on the basis of parliamentary succession, the legality of which depended on the right of resistance to James II. The victory, however, was more apparent than real. Louis XIV's recognition of the pretender on the death of James II alienated Jacobites whose patriotism was stronger than their Jacobitism. And secondly, Anne's succession almost coincided with the death of James II. Followers of the House of Stewart saw again a Stewart on the throne of her father. They realised that there was no longer any need for them to subscribe to de facto kingship, for they saw a way of basing Anne's claim on hereditary right. De facto gave way to hereditary. Little was heard of

(1) 'An Act for the security of his majesty's person.' The royal assent was given on April 27th, 1696. Parl. hist., v, 993-4.

the former in Anne's reign: and consequently our next section will be concerned with the latter, that is, kingship based on hereditary right.

CHAPTER FOUR (continued)

III : By hereditary right, against the claims of a parliamentary title based on the justice of the Revolution



HEREDITARY

3. Parliamentary versus hereditary

I

In William's reign no serious attempt was made to prove that the succession had not been broken in 1689.^① As we have seen, Harbin held in 1713 that the question had been formally settled, shortly after the Revolution, in favour of hereditary right. We suggested that this was historically inaccurate.^② The few attempts to prove William and Mary sovereigns by hereditary right were abandoned by

(1) Ferguson, writing before the Convention met, said that the new king should be chosen without regard to proximity of blood so that "The pretence of a divine right of succession, which had almost destroyed us of late ... will by this means stand for ever branded and condemned" - A brief justification, etc. (1688) S.T.Wm.III, i, p. 147.

(2) See above, pp. 227-229.

the very authors who put forward the plea. Fullwood, for example, began his Agreement betwixt the present and former government by declaring that the Convention had voted the throne vacant as to James only, and that the throne was therefore immediately full by succession. The Convention, he said, did not make William and Mary king and queen. They merely declared them to be so: "They do not say they make them so, but resolve they make them so, and then declare them to be what indeed they were".^① William and Mary were next heirs by right.^② But he immediately abandoned this position and devoted the rest of his pamphlet to show that there was no proof that they had any 'right' and that therefore they must be accepted only on the basis of de facto.^③ It was realized that to plead hereditary right was a travesty of the facts and the

(1) S.T.Wm.III, i, p. 423.

(2) Ibid.

(3) See above, p.234.

attempt was abandoned. With this brief notice of William's reign we may pass to that of Anne.

The accession of Queen Anne revived the hopes of the supporters of divine right and passive obedience. William III had had no claim to hereditary right except through his wife and, except to a few men like Burnet,⁽¹⁾ this right did not entitle him to have the administration, as he did have, to the exclusion of Mary. His right, in fact, was based solely on an extraordinary gift of the Convention. But Anne as the sole surviving child of James II (on the basis that the Prince of Wales was supposititious) could be said to possess a hereditary right to the crown. If James II had been alive when William died, Anne's hereditary right could not have been asserted. The death of James a few months before William was exceedingly opportune for, if the legitimacy of the young James, now styled James III, were not recognised, Anne

(1) See above, p. 97.

might be regarded as James II's successor by hereditary right. The recognition of James III's title was now the sole distinguishing mark between Jacobites and hereditary right theorists who supported Anne.^①

According^{ly}, there was a sharp division of opinion in Anne's reign which had been almost wholly absent in that of William. Many Whigs and Tories under William had been content to support his crown on the plea of de facto kingship. The Whigs, now finding themselves strenuously opposed by Anne's hereditary claim, found it not only expedient but imperative to base William's and Anne's claims not on possession merely but on a parliamentary basis.^② The doctrine of resistance in William's reign had taken a subsidiary place among theories

(1) Burnet, writing of the Abjuration Oath, 1702, said: "in a paper (which I saw) that went about them [the Tories], it was said, that right was a term of law, which had only relation to legal rights, but not to a divine right or to birth right; so since that right was condemned by law, they, by abjuring it, did not renounce the divine right that he had by his birth" - Hist., v, p. 11.

(2) See Appendix I, Note 66.

employed to justify the Revolution. But now in Anne's reign it became the only doctrine of the Whigs for it seemed to them that by the acceptance of that alone could the Revolution Settlement be completed by a Hanoverian succession.

II

From the very beginning of Anne's reign, the bulk of the Tories had acclaimed her as the successor of James II by indefeasible hereditary right.⁽¹⁾ Her father and elder sister were both dead and 'James III' was regarded as supposititious.⁽²⁾ This attitude to the Pretender was necessary; for, when accused of being Jacobites, the Tories could reply that if they

(1) See Appendix I, Note 67.

(2) Leslie said to Hoadley: "Her father and elder sister were dead before she came to the throne, and you have dispos'd of the Pretender [see below, p. 260] ... Therefore what have you to say against her hereditary right?" - Best of all (1709), p. 15.

did not accept him in 1702 they could not accept him on Anne's death.

Though this argument was logically sound, the Whigs were afraid to accept it or put any trust in it. They naturally suspected that the Tories had passed over James in 1702 because of the European situation. Louis XIV had made a diplomatic blunder by recognising the young prince as James III on his father's death; for it is generally recognised that he thereby alienated the Jacobites whose patriotism was stronger than their Jacobitism. Even men like Sacheverell, suspected of Jacobitism, would not accept a king at the dictates of Louis.^①

The Whigs, therefore, believed that the Tories accepted Anne because their hand was forced in that they realised that William died at a most inopportune time for a Jacobite restoration. And once Anne was settled on the throne, there was little likelihood of

(1) A defence of Her Majesty's title to the crown ... as it was delivered in a sermon ... before the University of Oxford ... 1702.
A second edition was published in 1710.

a successful Jacobite rebellion. The popularity of Anne with all parties was the best safeguard against her deposition. It was also a justifiable inference, on the part of the Whigs, that the Tories merely pretended to regard James as supposititious to justify their passing him over in 1702; that meanwhile by preaching hereditary right and non-resistance they would prepare men's minds for a Jacobite restoration;^① that, in addition, time would give them the chance to use all their efforts to induce James to change his religion.^② The Tories had to admit that England would not accept a Roman Catholic

(1) The Judgment of K. James the First and King Charles the First against non-resistance, etc. (1710) Preface, p. 3. See Appendix I, Note 68.

"Those who have cry'd up hereditary right against parliamentary right [use] a side argument in favour of the Pretender." - A tender and hearty address to all the freeholders, etc. (1714), p. 18.

(2) It is known that the Jacobites made frantic but fruitless efforts in the four last years of Anne's reign to induce James to become a Protestant. See Trevelyan, England under Queen Anne. Vol.3, passim.

king but they could reckon on a Protestant Stewart being more favourably received (at least, by the Tories) than a Protestant Hanoverian.

Anne's attitude to her brother was a mystery. Burnet tells us that in 1703, "stories were confidently vented, and by some easily believed, that the Queen was convinced of the wrong done her pretended brother, and that she was willing to put affairs in the hands of persons who favoured his succession. It was also observed, that our court kept too cold civilities with the House of Hanover, and did nothing that was tender or cordial looking that way".⁽¹⁾ Professor Trevelyan is inclined to believe that Anne's real mind in relation to her brother was never known. It had been told to William that Anne was in correspondence with James and that she agreed to accept the crown on William's death for her lifetime and secure succession after her death for him.⁽²⁾ If there was any evidence

(1) Hist., v, p. 104.

(2) Trevelyan, Blenheim, p. 118.

to prove this arrangement, it has been lost. But whether Anne ever contemplated any such arrangement or not is not material for our purpose. The important point for us is, that Whigs believed that Tories who upheld hereditary right and non-resistance were trying to pave the way for a Jacobite restoration after Anne's death.

The Tories' repudiation of James, therefore, appeared to be too slender a barrier between a Jacobite and a Hanoverian succession. As a Whig writer said in 1710:

"They further strenuously inculcate the best title of a prince to the crown is an hereditary one ... Now by this doctrine they make her majesty's title to stand only upon the question of another's illegitimacy".^①

The Whigs, therefore, owned James. This was a deliberate change of policy and it did not pass unnoticed.^② This new attitude has been criticised because, it is said, it strengthened the Jacobite cause towards the end of Anne's

(1) A letter to the good people of Great Britain, pp. 4-5.

(2) Leslie, Good old cause (1710), p. 7. See Appendix I, Note 69.

Trapp, The character ... of the present set of Whigs (1711), p. 20.

reign.^① But this is unjust. The Whigs had a very sound reason for what they did.

Whether James was supposititious or not did not matter to them now, for such an enquiry was beside the point. To them James had no right to be king even if he were beyond doubt the son of James II, as we shall point out later.^② But, by owning James, they hoped to drive the Tories into a corner. The Tories would be faced with the dilemma of confessing their Jacobitism or of abandoning the plea of hereditary right. They did neither and clung to their profession that James was illegitimate. But the Whigs would not have been true to their own creed if they had not put this proposition clearly before the Tories even at the risk of strengthening the Jacobite cause.

In the next place, even if the Tories were not Jacobites, their hereditary right theory excluded the Hanoverians for there were other claimants to the throne by hereditary right

(1) Trevelyan, England under Queen Anne, vol. 3, p. 52.

(2) See below, pp. 266 et seq.

who came before Sophia. Consequently, the only guarantee of a Hanoverian succession was the Act of Settlement which depended on the Revolution for its validity.

Setting aside the Jacobite question, we see that the theory of indefeasible hereditary right condemned the Revolution. In 1702, Sacheverell, preaching before the University of Oxford, said:

"The highest indignity to any crowned head is calling in question the right and title of its power and authority. For this is downright flying in the face of majesty, trampling upon its sovereignty and denying its vice-gerency ... It is mockery and deriding that wisdom and divine right whereby the crown is plac'd upon the head of majesty".^①

Anne's title was "so clear, manifest and undoubted, as even her very worst enemies must acknowledge ... her title ... devolv'd upon her, by a long succession of her royal ancestors." ^②

William's reign, the Bill of Rights and the Act of Settlement were all ignored. William was regarded as an usurper. That inference could

(1) A defence of her majesty's title to the crown, etc. (1702), 2nd ed. (1710), p. 9.

(2) Ibid., p. 10.

not be avoided. William's reign, it was inferred, might be regarded as being paralleled by the interregnum between 1649 and 1660, and just as in the latter year Charles II succeeded by hereditary right, so Anne succeeded by the same rule in 1702. But, if James at his death could transmit his right to Anne, it followed that he was king of right till his death.^① Thus, the doctrine of hereditary right condemned directly the Revolution.

III

But the Revolution was also condemned indirectly by the doctrine of non-resistance which went hand in hand with hereditary right. The Tories, when accused of Jacobitism, used the doctrine of non-resistance in their defence. Was that doctrine, they asked, not the greatest security

(1) "If she had it [the title] as his heiress when he died, he of himself was of right king while he lived; and consequently all that was done at the Revolution and since that time was usurpation" - Queries to the new hereditary right-men (1710), pp. 3-7.

See also, Appendix I, Note 70.

against a Jacobite rising? Were not the Whigs who preached resistance and admitted the legitimacy of James, the true Jacobites?⁽¹⁾ This latter query was manifestly too absurd to require any answer. But to the former query, some Whigs retorted that the doctrine of non-resistance applied only to a queen by indefeasible hereditary right. Anne, they said, did not have this attribute, and, therefore, the Tories could resist her in favour of James without breach of that doctrine.

(1) "Who are Jacobites now, the High Church
that maintain
The true right of succession in Anne's
bright reign,
Or your murmuring party, who grinning
disown
That the queen has, by birth, any
right to the throne?"

- The new revolution; or, the Whigs turned Jacobites. (1710), p. 4.

Cf. also: "The truth is, the Whigs themselves are Jacobites, if there be any such thing as a Jacobite in nature. Contrary to their oath, they assert the legitimacy and hereditary title of the Pretender: and then insist upon the lawfulness, nay duty of resisting the present government ... whenever they think the publick good requires it." - Trapp, The character and principles of the present set of Whigs (1711), p. 20.

Had there been no Jacobite problem, there would still have been the controversy over resistance and non-resistance. The question of the succession merely accentuated the differences because it gave to the doctrines, which would otherwise have been mere academic studies, vital applications to politics. To what extent the Whigs would have pressed the doctrine of resistance if there had been no Jacobite issue, it would be very difficult to say. Probably they would have been content to regard the Revolution as a fait accompli and as long as the Revolution Settlement was left unquestioned by the Tories, accept it without troubling to justify it.

We have found no evidence that the Tories ever openly condemned the Revolution. The only accusation that the Whigs could make was that the Tories insinuated that it was a crime by their adherence to hereditary right and non-resistance. The Whigs, therefore, tried to counteract this (to them) subversive teaching of the Tories.

The Convention, they maintained, had given the crown to William despite his lack of hereditary right. His claim was based solely on a

parliamentary grant, ratified by the king in parliament, after William was crowned king. The claim of William and the claims of all his successors could rest only on a parliamentary basis. The validity of these claims depended on the legality of the Revolution. And the right to resist a government must be held to be sufficient to constitute a legal settlement. "This Revolution-title", said Hoadley, "cannot be lawful (with respect to the Queen's possessing the crown) unless resistance, in cases of extremity, be lawful."^①

The Whigs ^{could} justify resistance only by propounding a revolutionary theory of government. The Tories might allow that the Revolution was legal, that the Revolution Settlement was legal, that a Hanoverian and not a Stewart should succeed Anne, but they would not allow that the Whig explanation for their legality was sound.

(1) Voice of the addressers (1710), in Works, i, p. 606.

The Tory attitude is expressed in their taunt that the Whigs,

"... over coffee, like rebels declare
That she rules by your courtesy, not as
an heir."^①

It was a denial of the whole Whig theory of government. As we have already mentioned, Sacheverell in 1702 struck the keynote of the controversy when he said that the questioning of the queen's title was doubting God's right to make her queen. But the Whigs openly declared that the queen was a queen by their courtesy. John Toland, writing in 1701 to popularise the Act of Settlement, defended the doctrine of resistance and the election of William.

"Nor did that Convention, or the present Parliament so much as consider (as some wou'd fain believe) whose right it was to succede as to whom they shou'd give a right of succeeding to the crown and regal government of England".^②

He ran over the list of kings since Saxon days and triumphantly came to the conclusion that indefeasible hereditary right was never a rule of succession in England.^③

(1) The new revolution; or, the Whigs turned Jacobites (1710), p. 4.

(2) Anglia libera, p. 130. cf. Appendix I, Note 71.

(3) Ibid., pp. 106-132.

Toland's conclusion with regard to William and Anne was "that no king can ever be so good as one of their own making; as there is no title equal to their approbation, which is the only divine right of all magistracy, for the voice of the people is the voice of God".^① Absolute hereditary right "woul'd subject us without remedy to be govern'd by tyrants, madmen, fools or idiots."^②

"For the voice of the people ... when declared by a free parliament is indeed the voice of God. And therefore whoever is thus sovereign de facto is also to be owned, upon that very account to be sovereign de jure; nay and has a better title to the throne, than if he could prove himself descended from Cain or Japhet by hereditary right, in case he wanted such an election by the people".^③

It was difficult for men to rid their minds of the hereditary element in king-ship. In the Convention, strong fears had been voiced that the English monarchy would become "a Polish monarchy". The single word 'hereditary' was ambiguous. It was of value only when qualified by the words 'indefeasible' or 'parliamentary'.

(1) Anglia libera, p. 26.

(2) Ibid., p. 109. Cf. his Memorial of the state of England. (1705) ~~above~~, p. below, p. 271.

(3) Memorial of the state of England, pp. 96-97.

The confusion in which this controversy found itself would have been saved if men had clearly stated what they meant by an hereditary right.

Swift, writing in 1710 in the the Examiner, asked how the queen's hereditary title could be in the interest of the Pretender. The Pretender's title, he said, was weakened by every argument which strengthened Anne's. He thus admitted the validity of the claim of indefeasible hereditary right. But he then went on to take a different view. "It is as plain," he wrote, "as the words of an act of parliament can make it, that her present majesty is heir to the survivor of the late king and queen her sister. Is not that an hereditary right?" And just as Swift put his own interpretation on the word 'hereditary', so he put his own interpretation on 'indefeasible'. He knew as well as any of his contemporaries that the word indefeasible was a stock word of the divine right theorists who meant thereby a right outwith the control of positive law. But he chose to ignore this meaning of it. When we

examine, he said, "the word indefeasible with which some writers of late have made themselves so merry, I confess it is hard to conceive how any law which the supreme power makes, may not by the same power be repealed." In the Bill of Rights where Queen Anne is named in remainder, we find these words: "to which we bind ourselves and our posterity for ever". Lawyers, said Swift, may argue that these words are against the very nature of government, "but a plain reader who takes the words in their natural meaning, may be excused in thinking a right so confirmed, is indefeasible, and if there be an absurdity in such an opinion, he is not to answer for it".⁽¹⁾

(1) Op. cit., in Works, ix, p. 91.

The words "for ever" were omitted in the Act of Settlement. Burke followed Swift's reasoning very closely (cf. his Reflections on the Revolution in France in Works, ii, pp. 290 ff.) It is unlikely that allegiance to the royal family "for ever" should be interpreted literally. We may compare Swift's remark in Clarendon's History. Clarendon refers to the Proclamation in Charles' II's reign that "we most humbly and faithfully do submit and oblige ourselves, our heirs and posterity for ever". Swift remarks: "Can they oblige their posterity 10,000 years to come?" - (Works ed. T. Scott, x, p. 323.)

Though Swift was writing as a Tory he was not interpreting the Tory theory of hereditary right according to their own meaning of it. He tried to take the sting out of their doctrine by pretending to believe that by hereditary right was meant not divine right but parliamentary hereditary right. He had already stated his own view that Anne's title was parliamentary. In 1708 he had said that the distinction between de jure and de facto was absurd, "For every limited monarch is a king de jure, because he governs by the consent of the whole, which is authority sufficient to abolish all precedent right."^①

The Whigs did not deny hereditary right for that would have made the monarchy elective.^②

Toland said:

"The royal line is on the one hand hereditary, to avoid the uncertainty, venality, tumults and disorders, of frequent elections from different families; but on the other hand, to prevent the worse inconvenience of having for our kings, madmen, fools, tyrants, papists, or persons otherwise unfit to govern, the succession is so limited by laws as

(1) Sentiments of Ch. of Engl. man (1708).
Works. Ed. T. Scott, iii, p. 69.

(2) Monarchy, as approved by Locke, was hereditary. See Of civil Government, Bk. ii, § 222.

as to be subject to diverse incapacities and 'tis at the pleasure of the legislative power to encrease or diminish such incapacities, as they shall find most conducing to the welfare of the nation".^①

(1) Toland, The memorial of the State of England, etc. (1705) p. 76.

CHAPTER FIVE

The king and the law

CHAPTER FIVE

I. THE OFFICE OF KING

The prevailing idea of kingship during the seventeenth century was that the office and person of the king were inseparable. Although this was a doctrine of the divine right theorists, it had, nevertheless, legal support. Allegiance was held to be due to the person of the king, not to the office. The reason given was that it was absurd to speak of allegiance to an office that was inanimate. The law governing allegiance was laid down in Calvin's Case, and it is worth noting that that case is, at the present day, the authority on this subject.^① Coke reporting that case, said that the king had two capacities in him; one a natural body, being descended from the blood royal of

(1) Halsbury, Laws of England, vol. 1.

the realm, and a politic capacity which was immortal. To which capacity was allegiance due? The decision in Calvin's Case was that it was due to the natural person of the king and not due to his politic capacity only, that is, to his crown or kingdom as distinct from his natural capacity.^① Coke condemned the "damnable and damned opinion" of the De Spensers, who, in Edward II's reign, had hatched the treason in their hearts that since the king had two capacities, subjects were bound to remove the king by force if he did not "demean himself by reason of the crown".^② Coke's conclusion is that "no man will affirm that England itself, taking it for the continent thereof, doth owe any legiance or faith, or that any faith or legiance should be due to it".^③

That an oath of allegiance can be taken

(1) Coke, Reports, ed. J.H. Thomas and J.F. Fraser (1826), iv, pp. 17-20.

(2) Ibid.

(3) Ibid.

only to a person is ordinary commonsense.

The important part of Coke's report is that the office is inseparable from the person.

Coke held that allegiance was due to James not because he had been invested with the office of king but because the office was inherent in him as hereditary successor to the crown.

Kingship was his birthright. If a king, therefore, could not lose his birthright he could not lose his kingship.

In the rebellion against Charles I the distinction between the person and the office of king was brought out. It may be seen tentatively formulated in the Declaration of the Lords and Commons in Parliament concerning His Majesty's Proclamation [condemning the

Militia ordinance of March 5, 1641/2],
 27th May 1642.^① The explanation by the
 Houses that their desire was to protect
 the king against his enemies must have
 appeared later as more ingenious than
 sincere, when the king's person was actually
 struck at. When Charles's head fell on the
 block in 1649 and not only the king destroyed
 but kingly government too, the theory of the

(1) "It is acknowledged", the Declaration ran,
 "that the king is the fountain of justice and
 protection, but the acts of justice and pro-
 tection are not exercised in his person, nor
 depend upon his pleasure, but by his courts
 and by his ministers, who must do their duty
 therein, though the king in his own person
 should forbid them; and therefore if judgments
 should be given by them against the king's will
 and personal command, yet are they the king's
 judgments" - Journal of the H. of L., v, 112.;
 Gardiner, Constit. doc. 3rd ed., p.256.

The ordinance of March 5 1641/2 had con-
 tained these words: "For the safety therefore
 of his majesty's person, the Parliament and king-
 dom in this time of imminent danger", etc. -
 Gardiner, op. cit., p. 245.

cf. Fortescue: "You [the king] will better
 pronounce judgment in your courts by others than
 in person: it being not customary for the kings
 of England to sit in court, or pronounce judgment
 themselves; and yet they are called the king's
 judgments, though pronounced and given by others" -
De laudibus legum Angliae (c. 1470), Chap. viii.

separation of the person and the office of king must have appeared a most dangerous tenet. And it was certainly so regarded at the Restoration. By the Corporation Act, every officer in every corporation, besides taking the other specified oaths, had to make the following declaratory oath: "That it was not lawful upon any pretence whatsoever to take arms against the king: and that he did abhor that traiterous position of taking arms by his authority against his person, or against those commissioned by him".

The same oath had to be taken by virtue of the Militia Act,^① of the Act of Uniformity and

(1) In the debates on the Militia Act, Sir John Vaughan maintained that "the people of England not only might, but in some cases were bound to take arms against persons commissioned by the king... as should put any such illegal commissions in execution". He desired, therefore, the word 'lawful' to be inserted before the word 'commissions'. Finch, the Attorney-General, replied "that it was not necessary, since the very word commission did impart it, for if it was not lawfully issued out to lawful persons, and for lawful reasons, it was no commission". Finch's interpretation was accepted. (See Cobbett's Parl. Hist. cf. Echard, Hist. of the Revolution. (1725), pp. 17-18.

In the debates on the Indemnity Act it had also been explained that commissions must be according to law. Although the debates indicate a feeling for the recognition of government bound strictly by law, nevertheless, the oath cited in the text indicates the final decision in the matter.

other acts.

In the debates on the Exclusion Bill, when it was proposed that a regent should govern in the name of James, it was argued that the person and office of the crown could not be separated, and this opinion prevailed. The same argument was used against the regency plan in 1689. It is a remarkable fact that the University of Oxford in 1683 took no notice of the tenet that the person and the office of the king were separable. But in the following year Parker satirically condemned it in a review of Rutherford's Lex rex wherein that theory had been propounded. The distinction, he said, between the

(1) Reresby's Memoirs. (Dryden House Memoirs ed., 1904), p. 212.

The Earl of Essex argued for the crown being an office, following the 17th chapter of Edward the Confessor's Laws.

See Samuel Johnson's Notes on the phoenix edition of the Pastoral letter (1694), p. 72.

(2) Burnet tells us: "a great deal was brought from both the laws and history of England to prove that not only the person but the authority of the king was sacred." - Hist., iii, p. 355.

king's person in concreto and the office in abstracto is a 'metaphysical nothing'. If the office could govern, there might be some meaning in the distinction. But he that commands us to submit to the office commands us to submit to the man in whom it is: "so that this is really no better than prophane trifling with the word of God, when we are in plain and express terms commanded to make no resistance to our governors, to get loose from so useful a law, by such childish and senseless trifles as plainly contradict the law itself".⁽¹⁾

Parker was expressing the current conception of kingship as held by the divine right theorists. It was this belief that was responsible for the schism of the non-jurors after 1689. The overthrow of the tenet that the office and person of the king were inseparable was imperative if the English monarchy was to be prevented from becoming absolute and irresponsible. The problem does not arise today when the functions of the crown are mainly exercised by ministers

(1) Parker, Religion and loyalty (1684), i, pp. 82-83.

responsible to Parliament; a fact which explains why Calvin's Case is still the authority on the law of allegiance. But in the seventeenth century, subjects had either to submit to the will of the king during his lifetime and so on for ever under his successors, without hope of redress against arbitrary rule, or else terminate arbitrariness by severing the link between person and office. And whatever theoretical justification might be put forward, such a severance did actually take place in 1688. James II during the remainder of his lifetime was deprived of his regal functions which were given to a king who had no natural right to them.

By the divine right theory the king, by being born of the blood royal, inherited the crown by natural right irrespective of positive law. The kingship was inherent in him. After the Revolution the Whigs disregarded birthright. The separation of the person and office of king enabled them to discard James II and transfer his

powers to William.^① Their new oath of allegiance to William was now justified because he was king by law. The relationship between person and office was thus reversed. Allegiance was due to whatever person was legally invested with the royal dignity. He was king who was invested with the power, and obedience was due to him in the same way as obedience is due to any temporary holder of an office.^②

It was stated that the oath of allegiance was taken not to defend the person of the king

(1) "Is our allegiance so inseparable from the person we have once sworn to, that no case whatsoever can alter it? ... Not the seeking the utter ruin and destruction of the people?" - An answer to Mr. Ashton's paper, etc. (1691) - S.T. Wm.III, ii, p. 111.

(2) When Parliament came to discuss William's revenue, a curious problem arose. Could the revenue settled on James for life be claimed by William as long as James lived? (See Macaulay, Hist., iii, p. 1343.)

But Finch said in the Convention Jan. 28 1688/9 "No man will say ... that the king has no more in the monarchy than the exercise of it" - Grey's Debates, ix, p. 18.

in his private capacity but to defend the crown which he represented.^① Herein we see the conception of the crown as an integral part of the English constitution. James, it was said, had pursued a policy inconsistent with that of the crown. He had exercised the functions of the crown not according to the rules of that office but according to his personal will. Two authorities, therefore, came into opposition, that of the crown and that of

(1) "The law considers the king as the head of the polity, and the primum mobile of justice and order; and has annexed to his royal dignity certain powers and functions, which cannot be separated from it, such as protection, government, and administration of the law. These compleat the idea of a king; and without them his royal dignity cannot subsist. So that the separation of these powers or functions from the person of the king, is as really and effectually a determination of his government or a demise as a natural death" - Some considerations touching succession and allegiance. S.T. Wm.III, i, p. 334.

"Allegiance is due to the king as king, that is as a person vested with the royal authority. It is the exercise of royal authority that constitutes his politick capacity, and draws to it the obedience of the subjects, and not merely the descent of a right to the crown" - Ibid., p. 337.

James.^① Allegiance could not be due to both. By the theory of divine right it was due to James. By the theory of the English constitution it was due to the crown.

Who are traitors, asked Ferguson, - they who attack the authority of the crown or they who preserve it? "The first and highest treason", he said, "is that which is committed against the constitution: and such and such crimes against the person and dignity of the supreme magistrate are only made and declared to be so, by reason of the capacity he is put into by the constitution of preserving and defending the society". He who endeavours to preserve the constitution is no traitor. But "to go about to subvert the constitution ... is ... the greatest treason he can perpetrate against the person, crown and dignity of the king".^②

(1) "'Tis with bleeding hearts that in this manifest extreme oppression and danger we beg your Highnesses aid to defend the rights of the crown and the realm" - A memorial to the Prince and Princess of Orange (Nov. 1688) S.T.Wm. III, i, p. 35.

(2) A brief justification, etc. (1688) S.T. Wm. III, i, pp. 136-7.

See also, Appendix I, Note 72.

When St. Paul's words in his Epistle to the Romans provided the foundation of the doctrine of non-resistance, it was natural that an interpretation should be sought which would conform to the new theory of resistance. It was argued that Paul did not forbid resistance to a person. By superior powers, it was said, Paul meant government, not a governor or king. The laws of the constitution constituted the 'superior powers' and these must not be resisted.^① The plea of the defence of the crown against the king was, naturally, not allowed to go unchallenged. Apart from the non-jurors, who would not separate the office and the person of the king, there were supporters of the Revolution Settlement who would not abandon the old interpretation of the doctrine of non-resistance. Michael Maittaire, for instance, would not accept this interpretation of the Apostle's words. He would not admit that the king could be

(1) St. Paul and her Majesty vindicated. 2nd ed. (1710), p. 3.

See also, Appendix I, Note 73.

resisted even if he "contradicted his office", for to him St. Paul's words plainly meant non-resistance to the person and did not refer to the office.^①

(1) The doctrine of passive obedience and non-resistance stated. 3rd ed. (1711), p. 11.

2. The king under the law.

Having discussed the separation of the politic and natural capacities of the king, we must now consider what acts of the king constitute such a separation. If the king could forfeit the crown, then he must hold it by some other rule than that of indefeasible hereditary right. The measure of rule was found in the laws of England. That the king was under the law was probably the most generally accepted opinion after the Revolution.

The mediaeval conception of law was that it emanated from the people and that its sanction was to be found in custom and not in the will of a supreme governor. Hence we find the popular conception that the ruler was subject to the law equally with the rest of the nation. The Roman maxim that the ruler is *legibus solutus* never received unqualified acceptance in England. And we must bear in mind the distinction between the king himself being *legibus solutus* and his governing arbitrarily without law. Emphasis in the Middle Age was put upon

administration, for, until modern times, legislation in our accepted sense was but imperfectly understood, if admitted at all.^①

The mediaeval conception of the king governing according to the law of the land is clearly enunciated in the thirteenth century anonymous poem Carmen de bello Lewensi.^②

"We say...that law rules the dignity of the king, for we believe that law is a light, without which we infer that the guide goes astray...If the king be without this law, he will go astray...If he conform to this law he shall stand and if he disagrees with it he shall stagger. It is commonly said, 'As the king wills, the law goes' : truth wills otherwise, for the law stands, the king falls."^③

Fortescue, in the fifteenth century, spoke of the power of an English king as 'dominium politicum et regale.' Such a king "may not rule his peple bi other lawes than such as thai assenten unto."^④

(1) Cf. Declaration of Merton, 1236. "Nolumus leges Angliae mutare."

(2) Written about 1264 in praise of Simon de Montfort.

(3) Op. cit. (ed. by Kingsford, 1890), pp.51-52.

(4) Fortescue, The governance of England. (ed. by C.Plummer, 1885.) p.1.

The mediaeval conception of law was destined to be eclipsed under the Tudor and Stewart régimes. The legislative function, which, as we have noted, was imperfectly understood in the Middle Age, began to assume importance in our constitutional development. While Henry VIII continued to increase his executive powers in administering law, he realized the significance of making new laws through Parliament. Parliament as a legislative organ (as distinct from a money-voting one) entrenched itself deeper and deeper into our constitution until it secured the recognition at the Revolution, as we shall see later, of the sole right of enacting and repealing laws.^① While the legislative continued to make headway, the executive pursued an independent course. The king's prerogative steadily increased till in the seventeenth century we have the struggle between statute and common law on one side and the royal prerogative on the other. The king by virtue of the royal prerogative came to set himself

(1) See below, chap. 6 : Parliament.

above the law. In James II's reign it seemed to men that nothing short of a revolution could alter this.

"Our laws are so many cyphers"^① was the outcry of one writer at the Revolution. No one suggested that the king should be divested of the whole of his prerogative. Locke favoured its reasoned use:-

"This power to act according to discretion for the public good, without the prescription of the law and sometimes even against it, is that which is called prerogative; for since in some governments the law-making power is not always in being and is usually too numerous, and so too slow for the dispatch requisite to execution, and because, also, it is impossible to foresee and so by laws to provide for all accidents and necessities that may concern the public, or make such laws as will do no harm, if they are executed with an inflexible rigour on all occasions and upon all persons that may come in their way; therefore there is a latitude left to the executive power to do many things of choice which the laws do not prescribe".^②

The right of prerogative is to be exercised only in exceptional cases. It must not conflict with Locke's maxim that the government is bound

(1) Political aphorisms. S.T.Wm.III, i, p. 395.

(2) Second Treatise, § 160.

to rule "by established standing laws, promulgated and known to the people, and not by extemporary decrees."^① That James II had endeavoured to set himself above the laws (mainly exemplified by his dispensing with the Test Act) was the primary cause of the Revolution. Amid all the divergent and often conflicting reasons given after 1689 for supporting the Revolution Settlement, the one argument which is common to all theories is the rule of law.

"Absolute monarchy," said Locke, "which by some men is counted for the only government in the world, is indeed inconsistent with civil society, and so can be no form of civil government at all."^② His reasons were logical. Firstly, in the state of nature, he argued, there was no "known authority" to which men could

(1) Second Treatise, §131.

(2) Ibid., § 90. This is quoted by Sir William Holdsworth to prove his contention that Locke denies legal sovereignty. But this quotation does not prove the point one way or another. A 'sovereign' body which is not arbitrary is not sovereign. But it does not follow that the denial of arbitrariness to monarchy precludes some other sovereign organ. See History of English law, vi, p.285 and note 11.

appeal for redress of injuries. Men left the state of nature and entered political society to remedy this inconvenience, and if they subjected themselves to arbitrary government they put themselves in a worse position than they were in in a state of nature. "By supposing they have given up themselves to the absolute arbitrary power and will of a legislator [i.e. governor] they have disarmed themselves, and armed him to make a prey of them when he pleases."^① Secondly, the government cannot be arbitrary because "nobody has an absolute arbitrary power over himself, or over any other"^② in a state of nature, and nobody can transfer to another more power than he has in himself.^③

Toland said that a despotic monarchy was "a government of beasts",^④ and practically all

(1) Ibid., § 137.

(2) Ibid., § 135. (3) Ibid.

(4) Memorial of the State of England. (1705)
p. 78

writers in our period condemned arbitrary government. With a few exceptions (Leslie, for example) all men were agreed that the king had not only the law to guide him in administration but that he was strictly bound to govern according to law. Nothing had been left to the king's private discretion, and the law laid down rules by which the king must govern and the subject obey. Fortescue was constantly quoted to demonstrate that our government was a legal, regal or political in opposition to a despotical, absolute, arbitrary or tyrannical government.^①

Although it was generally conceded that the king ought to govern according to law, it was not clear to many men how the king should be forced to observe this rule. It is one thing to say that the king ought to be under the law, and another thing to provide a means for enforcing it. The maxim that the king is

(1) See Appendix I, Note 74.

under the law did not always have the right of resistance for its corollary.

But those who pleaded for the right of resistance always based their claim on the rule of law.

"If the king is not obliged to govern by those laws that they have made, to what purpose are the people to obey such laws ? ...If a magistrate, notwithstanding all laws made for the well-governing a community, will act plainly destructive to that community they are discharg'd either from active or passive obedience, and indispensably oblig'd by the law of nature to resistance." ^①

At the same time, they made it clear that resistance to a king governing by law was not justifiable. ^②

(1) Political aphorisms. S.T.Wm.III, i, p.395.
See also Appendix I, Note 75.

(2) See Appendix I, Note 76.

III : The constitutional original contract.

In the two preceeding sections we have discussed two points. Firstly, we saw that the person and the office of the king may be separated. Secondly, we saw that the king may effect this separation by ruling contrary to law. We have now to consider why the people may resist if the king does not govern by law. This point is illustrated by the constitutional original contract.

The pactum unionis has already been discussed.^① By it the government was made a trustee for the people who remained sovereign with a right to recall the delegated power when the government dissolved itself. There was no equality between governor and governed. But the more usual form of contract propounded by theorists for contractual government was the pactum subjectionis, i.e., a pact between governor and governed, both parties to the contract being equal. This was the type of contract which engaged men's minds most after 1688. It was the form indicated in the resolution of Jan-

(1) Above, chap. 2, sect. 2.

uary 28, 1689, according to the interpretation put upon it both inside and outside the Convention. Burnet, analysing opinion in parliament in favour of the contract, refers us for proof of the theory to the coronation oath, which, he says, clearly showed that the king was crowned after the people had agreed to swear fealty to him and the king had promised to defend his people and govern them by law. Homage was done to him only after he had made this promise. "And though of late the coronation has been considered rather as a solemn instalment than that which gave the king his authority", Nevertheless, it showed "what the government was originally." ^①

Burnet took a very cautious view of the contract and did not commit himself to the opinion that the coronation of William represented the re-enactment of the original

(1) Burnet, Hist., iii, pp. 367-8.

contract, as other writers boldly asserted. But Burnet did make it clear that the conception of a pactum unionis was not entertained in the Convention.

In the reports of the debates which we have, we find no one making any such claim. We can supplement the negative evidence^① of Grey's Debates with Burnet's History. Burnet tells us that, in the Convention, suggestions were made that the government was dissolved and that the people were put back into a state of nature, so that they were at liberty to erect a government on a new foundation. This was a bold assertion, says Burnet, "for that might have been carried so far, as to infer from it, that all men's properties, honours, rights, and franchises, were dissolved".^②

(1) In the Convention, Sir William Williams said: "Should you go to the beginning of government, we should be much in the dark" (Grey's Debates, ix, p. 15) and Finch remarked: "That it is devolved on the people ... is I believe farther than gentlemen would go ... If we were in the state of nature, we should have little title to any of our estates" (Ibid., p. 18).

(2) Burnet, Hist., iii, p. 362.

This was the obvious danger to be faced if James were regarded as having broken the pactum unionis, so that all government was at an end and a new one had to be built from the foundation. King James, it was held, had not dissolved political society but had merely endeavoured to subvert the constitution. Sherlock shared Burnet's fear. In a state of nature, he said, "all men are equal, and all things common."^① Such an idea as the reversion to a state of nature, therefore, did appear to be quite out of keeping with the whole spirit of the Revolution, which had been undertaken to preserve society and government from the subversive attacks of James. But the fear was groundless. For, as we have seen, Locke did not share Burnet's and Sherlock's view that the state of nature was one of equality, socially and economically. A return to a state of nature would not dissolve "all men's properties, honours,

(1) See Appendix I, Note 77.

rights and franchises." Society, as a social unit, would remain, but the government being dissolved, society had the right to renew it. It is true that it was deduced from this theory that the people had the right to set up any new form. But the suggestion that a new form should be established was scarcely ever mentioned. But the acceptance of a pactum unionis required also the acceptance of a complete theory of the fundamentals of government, the origin of the state and the basis of authority. And these were deeper matters than most men wished to probe into.

The contract, therefore, to most men meant simply "the mutual obligation between the king and the people."^① The appeal was not to the law of nature, but to the laws of England. Though kings, said Samuel Masters, have the law of God to maintain and protect them in the use of that authority to which they have a just right, yet that right is to be measured only by the constitution of the realm and it may be alienated without incurring

(1) Political aphorisms. S.T.Wm.III, i, p. 395.

any sin against God as they who assert jus
divinum would pretend.^① To ask for a book in which
the original contract was recorded would be absurd,
he said, "that compact being nothing else than a
tacit agreement between king and subjects to
observe such common usages and practises as by
an immemorial prescription have become the common
law of our government."^② For Masters, the coron-
ation oath was the symbol of this immemorial pact.^③
From that ceremony he concluded that there are
rights and liberties reserved in the people and that
the will of the king is limited by the law of
the land and that he is bound by his oath to
conserve the laws, as the subjects are by their
oaths of allegiance to obey them.^④ This view

(1) The case of allegiance considered.
S.T.Wm.III, i, p. 320.

(2) Ibid., p. 322.

(3) The coronation oath taken by William and Mary was : "Will you solemnly promise and swear to govern the people of this kingdom of England and the dominions thereto belonging, according to the statutes in Parliament agreed on, and the laws and customs of the same ?"

(4) The case of allegiance considered. S.T.,
Wm.III, i, p. 322.

was taken by many writers.⁽¹⁾

The coronation had, as Burnet confessed,⁽²⁾ come to be regarded merely as a ceremony. It symbolised the tie of fealty between subjects and king. But since the time of Edward I the king had succeeded on the death of his predecessor and thus the maxim had grown up that the king never dies. Coke, in Calvin's Case, had laid it down as the law, that the king was as fully king before as after his coronation. Allegiance was due to the king irrespective of his coronation. Consequently, allegiance was absolute and had nothing contractual about it.⁽³⁾ But, by regarding the coronation as the re-enactment on an original contract, allegiance could be held to be conditional. Locke's pactum unionis was not capable of historical proof. But to those who asked where the original contract could be found,⁽⁴⁾ the reply

(1) See Appendix I, Note 78.

(2) See above, p. 296.

(3) See Appendix I, Note 79.

(4) e.g. by Phipps at the Sacheverell Trial. S.T., xv, 232.

that it was to be found in the king's coronation oath was plausible. It is very significant that that was the interpretation later put upon it by Blackstone.^①

Resistance doctrinaires often contented themselves with the bare assertion that allegiance was conditional.^② The condition was that the king should govern by law. We have seen that the advocates for resistance did not allow resistance unless this condition had been violated. Though some admitted that unsuccessful resistance would be treated as treason, thus inferring its illegality, nevertheless, it was more usual to plead only for resistance which could be regarded as non-

(1) "As to the terms of the original contract between king and people, I apprehend to be now couched in the coronation by the statute 1 Wm. and Mary, sec. I, c. 6 is to be administered to every king and queen." - Commentaries. (9th ed., 1783) Bk., chap. 3, p. 234.

Blackstone did not accept Locke's contract. "This notion...is too wild to be seriously admitted." - Ibid., p. 47.

(2) "The subjects allegiance, though some may call natural, it hath always a respect to the laws in being and by consequence to the compact and agreement between prince and people." - English loyalty, etc, - S.T.Wm.III, p. 408.

illegal. The contract was the only way of constituting such resistance. Resistance was justifiable only after the king had broken the contract and absolved his subjects from their allegiance. A subject who owed no allegiance could not be guilty of treason.^①

The mediaeval interpretation^② of the maxim 'The king can do no wrong' was usually accepted. That is to say, it was taken to mean that the king could do nothing but what the law empower-

(1) "If the prince violates his part of the contract and endeavours the subversion of our laws and religion, the question is, Whether he does not thereby absolve the people from their allegiance to him if either they or their representatives find themselves under a necessity to assert their liberties?" - A defence of the Archbishop's sermon on the death of her late majesty. (1695). S.T. Wm.III, ii, p. 535.

Lechmere, at the Sacheverell Trial, said that our government was based on the original contract between the crown and the people "and if the executive part endeavours the subversion and total destruction of the government, the original contract is thereby broke, and the right of allegiance ceases, that part of the government, thus fundamentally injured, hath a right to save or recover that constitution, in which it had an original interest." - Sach. Trial. 8o ed., p. 34. S.T., xv, 61.

Out of twenty speakers for the prosecution at the trial, Lechmere and Stanhope were the only speakers to mention a contract.

(2) Holdsworth, History of English law. Vol. 3 (3rd ed.) p. 465.

ed him to do.^① Occasionally, however, we find the modern interpretation, that is, that the king's ministers are responsible for the king's acts.^② But the convention of the constitution, whereby the king became irresponsible and executive acts became controllable through the responsibility of a cabinet, based on party government, to parliament had not yet been conceived. And the question of the responsibility of the executive can be considered best in relation to parliament. This will be part of our consideration in the next chapter.

(1) See Appendix I, Note 80.

(2) See Appendix I, Note 81.

CHAPTER SIX

Parliament

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PARLIAMENT

Since 1689 parliament has sat every year, but we are not here concerned with the constitutional device which ensured annual parliaments. We are concerned with what Englishmen thought of the constitutional significance of parliament, their attitude to its position in our polity, and with the powers which they thought parliament ought to possess.

In 1610 James Whitelock in Bate's Case opposed to the sovereignty of the king the sovereignty of parliament. He said there must be a sovereign power "that can control all other powers, and cannot be controlled by itself ... The sovereign power is agreed to be in the king, but in the king is a two-fold power; the one in parliament, as he is assisted with the consent of the whole state; the other out of parliament as he is sole and singular, guided merely by his own will. And of these two powers in the king, one is greater than the other, and can direct and control the other, that is *suprema potestas* the sovereign power and the other is *subordinata*.

It will then be easily be proved, that the power of the king in parliament is greater than his power out of parliament ... Acts of parliament be they laws, grounds or whatsoever else, the act and power is the king's but with the assent of the Lords and Commons, which maketh it the most sovereign and supreme power above all and controllable by none".^①

This view of Whitelocke's is hardly an advance on that of Sir Thomas Smith who, in his Commonwealth of England said: "The most high and absolute power of the realm of England consisteth in the Parliament ... The Prince ... hath absolutely in his power the authority of war and peace ... The prince useth also to dispense with laws whereas equity requireth a moderation to be had &c.. The prince giveth all the chief and highest offices of magistracies of the realm ... To be short, the prince is the life, the head and the authority of all things that be done in the realm of England".^② Sir Thomas Smith was not inconsistent. He was merely stating that the parliament was supreme legislator and king supreme admin-

(1) Prothero, Select statutes, etc. 4th ed. 1913, pp. 351-2.

(2) Ibid., pp. 178-9.

istrator. Whitelocke amplified this concept and made the king in parliament greater than the king out of parliament. But he continues thus: "The sovereign power is agreed to be in the king." The power of the king in parliament functioned only when the king willed that it should do so. And so long as the king was in opposition to the two Houses, Whitelocke's greater sovereignty had a poor chance of being a reality. The inharmonious partnership between the king and the two Houses led to the Civil War, the abolition of the monarchy, and the predominance of a kingless parliament. England did not like the Commonwealth and the restoration of the Stewarts was made easy. The most important constitutional result of the Commonwealth régime was the increased strength of parliament with a corresponding decrease in the power of the king. Charles II did not dare to dispense with parliament for any great length of time as his father and grandfather had done. The constitutional position, however, was falsified. The Church of England had suffered as much as the king at the hands of the Puritans under the Commonwealth and, therefore, at the Restoration

they entered into a close alliance. The church taught the doctrine of absolute non-resistance to the king as sole sovereign power in the state. And, therefore, whenever parliament showed a tendency to limit the royal authority, the king could depend on the unwavering support of the church. The legal position of the prerogative was stated in terms which would not have astonished a Tudor lawyer.^① Parliament, which passed the Clarendon Code and the Test Act, was the servant of this Church-King alliance. It was as a servant that parliament was regarded. In 1683 the University of Oxford decreed that it was a damnable sin to assert that the sovereignty of England was in the three Estates viz. King, Lords and Commons.^② This theory of the constitution was maintained by the church as long as the church was supported by the king. By breaking the alliance between crown and church, James II brought about the Revolution. One significant fact stands out. Parliament had maintained its position in our polity. Its

(1) Holdsworth, Hist. of Eng. Law, vi, p. 208.

(2) Decree the Fourth.

strength existed in fact if not in theory. And when the church withdrew its support from the monarchy, parliament was in a position to assume its place in theory as well as in fact.

Even after the Revolution, however, parliament itself did not feel that it had secured the upper hand. The chief ground for deposing James was his dispensing with statutes in the interests of Roman Catholics. James, it was said, assumed a legislative power that was not his by the English constitution. It may be noted here that the best legal opinion now is that James had a dispensing power.^① However, statesmen at the Revolution acted upon the assumption that James's acts were illegal^② and any doubt that existed was removed in the Bill of Rights.

(1) Holdsworth, Hist. of Eng. law, vi, p. 225.

(2) "Did not the late king, by his dispensing power and his sole authority" make laws for the recusants? "What could any law made by the true legislative authority, a king with his parliament, have done more for them than the king himself, without a parliament's concurrence, did? I think ...this instance sufficient to shew that the dispensing power which King James used, was, to all intents and purposes, a legislative power." - A letter to a bishop concerning the present settlement and the new oaths. Som. T., ix, p. 375.

Parliament now claimed to be the only legislative organ, but this was the highest claim made. It was not clear yet that the king in parliament was sovereign.

Masters complained that the divine right theorists made the king's will the sole spring of our government and would not allow to an English parliament any more power than to give some inauthoritative advice which the king might use or neglect as he thought fit, which made all our laws entirely dependent on his pleasure for their being, continuance and influence.^① Masters was justified in making this complaint, for it was a true statement of the Divine Right theorists' attitude to parliament. That the two Houses of Parliament acted only in an advisory capacity to the king in legislation was a theory which non-jurors^② and High-Church Tories^③ continued to hold throughout our period. But it was a theory no longer held by the majority of men.

(1) The case of allegiance considered. S.T.Wm.III, i, p. 321.

(2) e.g. Kettlewell.

(3) e.g. Leslie.

After the Revolution, parliament was generally regarded as the only law-making body in the nation. Some writers were confident in making this assertion. That this was the position said one writer "I need not labour to make out."^① But even by 1710 the supremacy of parliament in legislation had not been vindicated beyond dispute and pamphlets showed that this position had still to be hotly defended.

We have already seen that it was a generally accepted maxim after the Revolution that the king was under the law. This meant that the king as executive ought not to alter the law on his own authority. He ought neither virtually to repeal a statute by dispensing with it nor assume the power of parliament by making a new law. No law ought to be made or repealed except by the king in parliament. Sir Humphrey Mackworth wrote in 1701:

"The King, Lords and Commons united together have an absolute supreme power to do whatsoever they shall think necessary or convenient for the public good, of which they are the only judges, there being no legal power on earth to control them."^②

(1) A debate upon the query, etc. S.T.Wm.III, i, p. 233.

Cf. "That no law be made or abrogated without consent of Parliament is a fundamental of our constitution." - A letter to a friend. (1689) Som. T., x, p. 196.

(2) A vindication of the rights of the Commons of England. Som. T., xi, p. 282. Cf. p. 312.

Mackworth's reference to there being no legal power to control parliament requires a word of explanation. This was an advance on the earlier interpretation of the legislative power of parliament. It had been held that the Courts of law could control legislation to the extent of declaring a statute null and void which conflicted with natural law,^① or positive fundamental laws. Burnet records that "It was a maxim among our lawyers, that even an Act of Parliament against Magna Carta was null of itself".^② Swift called this "a Scottish maxim",^③ and undoubtedly the theory that the law of nature, as interpreted by the Common lawyers, could override an act of parliament was quickly going out of fashion. In 1690 Sir William Pultenay said in the House of Commons:

"I will not dispute what an Act of Parliament can do. It may have resemblance of the great power of the world: it may create and uncreate. It may make the moon shine, for ought I know".^④

(1) Hobbes, A dialogue of the common laws (1681), Molesworth ed., vi, 4-6. cf. Speech of Serjeant Maynard, Grey's Debates, ix, 98 and Locke, Second Treatise: § 188.

Cf. also Pollock, Essays in the law (1922), p.97.

(2) Hist., ii, p. 205.

(3) Swift's Works, x, p. 347.

(4) Grey's Debates, x, p. 104.

But this, as we shall see, was mainly a contribution of moderate Tories to political thought. It was not always accepted by the Whigs.^① The greatest power that can so far be assigned to parliament is its unrivalled right of legislation. It does not follow from this premiss that parliament is sovereign, that is, that parliament is irresistible. If parliament had been regarded as sovereign, then there could have been no place in political thought for the doctrine of resistance. It is true that advocates of resistance were usually thinking of resistance to the king as executive ; but, nevertheless, it was inconsistent to speak of any resistance by the people if there existed a 'supreme power' over and above both king and people.

The Revolution depressed the power of the king without elevating any power to take its place. Sovereignty, taken from the king, was not transferred to any other person or body. Nevertheless, parliament was often regarded as the 'supreme

(1) See Appendix I, Note 82.

power', but not to the extent of being irresistible in the same way that the king under the doctrine of non-resistance had been. The transition from the sovereignty of the king to the sovereignty of the parliament marks the period of the doctrine of resistance.

Before the Revolution the king in parliament was not a successful rival to the king for the claims of sovereignty. Hence the doctrine of non-resistance was simple and straightforward. The king, as supreme power, could on no account be resisted. After the Revolution several options were offered to political theorists. Firstly, the old doctrine of non-resistance could be adhered to, resistance to James admitted and consequently condemned, and the Revolution regarded as a crime. Those who took up this attitude were the non-jurors. Secondly, the old doctrine could still be held and the Convention's interpretation that James had abdicated be accepted. In this case resistance to James was not admitted. Thirdly, the doctrine of non-resistance could be abandoned, resistance to James admitted and the doctrine of resistance accepted. Fourthly, the doctrine of non-resistance

need not be abandoned if that doctrine were made to apply to some supreme power other than the king. In this case, resistance to James was not a violation of the doctrine of non-resistance. The fourth case is the one we are now going to consider.

The Tories held that there must be a supreme power in every state - not a vague sovereignty of the people - but a sovereign governmental institution. The doctrine of non-resistance (while it had been recognised by all to apply to the king) had not always specifically mentioned the king by name. It was the supreme power that on no account could be resisted. It was easy, therefore, for casuists after 1689 to give a new interpretation to the phrase 'supreme power'. While the extreme Tories continued to regard the king as sovereign, the more moderate section of the party came to place the supreme power in parliament.⁽¹⁾ The Whigs, as we shall see, instead of being satisfied that they had

(1) e.g. Swift, Sentiments of a Church of England man (1708).

forced their opponents to abandon the 'slavish' interpretation of the doctrine, opposed the new interpretation as well.

Ofspring Blackall, who was attacked so vigorously in 1708 by Hoadly, as we have seen, said in a sermon in 1704:

"This I say is the duty, as it is plainly taught in Scripture, of subjects to their governors: that is to them who have the supreme authority of the nation to which they belong, by whatsoever name or title they are called, that is, to the legislative power in what hands soever it is lodged by the particular constitution of the place ... There is indeed in every country, state, kingdom, or commonwealth, the kingly or supreme power lodged somewhere or other either in one, in few or in more hands. This power, I say, there is in the government of every nation, as well in a democracy, or aristocracy as in a monarchy: and as well in the most limited monarchy, as in that which is the most arbitrary and absolute: and I say, it is this kingly power wherever it is by the constitution seated or lodged that is to be feared and obeyed".⁽¹⁾

No one particular form of government, says Blackall, can claim divine sanction. All power is from God, but the form in which that power is exercised is of human institution. If this is granted, then:

(1) The subject's duty in Works (1723), ii, p. 1123.

"There is no one form of government but may be changed and altered provided that they that make the change have sufficient authority to make it: and sufficient authority he or they must be allowed to have, to make any change or alteration in the form and manner of government ~~who or~~ who have for the time being, the supreme and sovereign authority in that nation wherein such change is made. For the sovereign authority of every state or nation, whether it be lodged in one hand, or in many, is, and in the nature of the thing must needs be, absolute, unlimited and uncontrollable".^①

If the sovereign power is solely in the king, he may alienate it to one or many. If the right of government was originally in the people, the people may likewise alienate it. If the sovereign people choose a king, "they may choose him upon what conditions, they may constitute him with what limitations they please".^② Consequently, "any of these changes or alterations in the form or manner of government, being made by such as, for the time being, were lawfully possessed of the sovereign power, will be regularly made: and being once made, will be valid and binding".^③ Burke said: "A state

(1) Ibid., p. 1126.

(2) Ibid., p. 1127.

(3) Ibid., p. 1127.

without the means of some change is without the means of its conservation".^① Likewise Blackall declared:

"No one generation of men can ever in such matters so bind the hands and restrain the power of the generation to come, but that they in their time, will have the same full power to order publick affairs according to their own liking".^②

Thus, Blackall in 1704 wrote of the sovereignty of parliament in as unambiguous terms as Dicey has in our own day. If the Whig ambition was to put the king under the law, was it not in their interest that parliament should be exalted to this position of supremacy? Yet Hoadly feared the sovereignty of parliament as much as he feared the sovereignty of the king. In reply to Blackall, he said:

"Who can imagine that our parliament chosen by the people to maintain our constitution and enact wholesome laws, can receive immediate authority from God to ruin it, if they think fit, and to consent to turning it into an absolute monarchy ... and the people, in a state of damnation unless they meekly submit to all this".^③

(1) Reflections on the Revolution in France. (1791) in Works, ii, p. 295.

(2) Op. cit., p. 1128.

(3) Some considerations humbly offered to ... the Lord Bishop of Exeter (1709), p. 11, in Works, ii, p. 134.

Hoadly accepted Blackall's postulate that the supreme power was lodged in King, Lords and Commons.⁽¹⁾ But he did not come to the same conclusion that this power was irresistible. It is significant, however, that some of Hoadly's followers were inclined to side with Blackall rather than with Hoadly.⁽²⁾

The Sacheverell Trial illustrated clearly the confusion to which the locus of sovereignty was subjected by the rival theories of resistance and non-resistance. Harcourt, Sacheverell's counsel, resorted to the new interpretation of non-resistance and declared that there was no resistance in 1688 to the supreme power. James only was resisted. But the supreme power was parliament, which was not resisted. Dodd, too, pleaded that parliament could not be resisted and since the doctrine of non-resistance applied only to the supreme power, that doctrine was still valid. Phipps followed this lead. It is

(1) Some considerations humbly offered to...the Lord Bishop of Exeter, in Works, ii, p. 127.

(2) "An Hoadleian believes that by the laws of God and our constitution, passive obedience and non-resistance is a duty to be paid to this power [parliament] by all subjects" - Chuse which you please, etc. (1710), p. 4.

clear that Sacheverell meant in his sermon that all resistance to the queen was illegal. But it is significant that his counsel were compelled to adopt the supremacy of parliament in order to reconcile Sacheverell's doctrine of non-resistance with the resistance (which they admitted) at the Revolution.

Swift attempted to reconcile the doctrine of non-resistance with the supremacy of parliament. He said that it was clear that those who had preached the doctrine had been "misguided by equivocal terms." The question had always been: "whether under any pretence whatever it may be lawful to resist the supreme magistrate?" The answer given in the negative, said Swift, "is certainly the right opinion." He continued:

"But many of the clergy, and other learned men, deceived by dubious expressions, mistook the object to which passive obedience was due. By the supreme magistrate is properly understood the legislative power, which in all government must be absolute and unlimited. But the word magistrate, seeming to denote a single person, and to express the executive power, it came to pass, that the obedience due to the legislature, was, for want of knowing or considering this easy distinction, misapplied to the administration." ①

(1) The sentiments of a Church of England man, etc. in Works, iii, p. 67.

A Church of England man, said Swift, "would defend it [the Church] by arms against all powers on earth, except our own legislature; in which case he would submit, as to a general calamity, a dearth, or a pestilence."^①

From the Tories' new interpretation of the doctrine two facts emerge. Firstly, the sovereignty of parliament was not an established constitutional maxim beyond dispute. It was put forward as a makeshift argument to reconcile resistance to James in 1688 and the doctrine of non-resistance. Secondly, it demonstrated that the supremacy of parliament was not regarded as inconsistent with resistance to the executive. There was little difference between the opinions of the Commons and the counsel of Sacheverell. Both sides admitted the fact of resistance to James. Both admitted that parliament was the supreme power. But the conclusions to be drawn from these two premisses ^{were} ~~was~~ not the same. The Commons said they negatived the doctrine of non-resistance. The defence maintained that the doctrine was not violated by the Revolution and was therefore as valid after 1688 as before.

(1) Ibid., p. 55.

Cf. also, "the legislative power, which in all governments must be absolute and unlimited." - Ibid., p. 67.

The Tories surrendered the substance of the doctrine for the shadow. Had those Tories who adopted the new interpretation been able to adhere to the doctrine by shifting the sovereignty from the king to the parliament and still maintain that all resistance to both king and parliament was unlawful, they would have provided the solution to the constitutional problem of post-Revolution England. The new interpretation of the doctrine of non-resistance served to explain the Revolution; and the continued propagation of a doctrine of non-resistance perhaps served to check the anarchic tendency of the doctrine of resistance. Whether men accepted the new doctrine of non-resistance or the new doctrine of resistance the same practical problems faced them. The fact that the ultimate development of the constitution admitted of no doctrine but that of non-resistance does not warrant its advocates in our period claiming more foresight than their opponents. Neither doctrine, according to the meaning as understood by men at the time, corresponded to the constitution as it was developing after 1688. The resistance theorists instead of attempting to reconcile the

old doctrine of non-resistance with the Revolution abandoned that doctrine entirely. They were more honest, perhaps, than their opponents, for they scorned to quibble with words and, like Defoe, admitted that the doctrine had been based on the recognition that the king was irresistible. And if they would no longer allow this quality to the king, then they felt that they ought to abandon the doctrine completely.

That a doctrine of non-resistance, even if interpreted as applying to parliament, was untenable is brought out by a consideration of resistance doctrinaires' attitude to parliament.

Locke admitted that the supreme power of a nation was lodged in the legislature.

"This legislative", he wrote, "is not only the supreme power of the commonwealth, but sacred and unalterable in the hands where the community have once placed it. Nor can any edict of anybody else, in what form soever conceived, or by what form soever backed, have the force and obligation of a law which has not its sanction from that legislative which the public has appointed and chosen... and therefore all the obedience which by the most solemn ties any one can be obliged to pay, ultimately terminates in this supreme power, and is directed by those laws which it enacts."^①

(1) Second Treatise, § 134.

In another place he says much the same thing :

"In all cases whilst the government subsists, the legislature is the supreme power...all other powers or parts of the society being derived and subordinate to it."^①

Locke did not require to consider whether parliament may be resisted, for resistance could take place only after the government had been dissolved. In the chapter on the doctrine of resistance,^② we saw that Locke made the king solely responsible in four and partly responsible in one of the five ways mentioned by him in which the government may be dissolved. It is obvious, therefore, that resistance to the king is the remedy for any alteration of the constitution. There could be no case in which it was necessary to resist parliament as a corporate body exclusive of the king. The most that can be said is that when the king is resisted for what he does in parliament, parliament is resisted, for the king is a constituent part and to resist a part is to resist the whole. Although Locke justified resistance by his theory of

(1) Second Treatise, §150.

(2) above, chap. 2, sect. 2.

the dissolution of government, and although he made the king responsible, he did not make the king's guilt consist of usurping functions which properly belonged to parliament. By the original contract the constitution was unalterable by constitutional means. It can be altered only by the people after it has been destroyed by the king alone or by the king in alliance with the two Houses. Locke gives a specific example of the limitations of parliament in constitutional legislation. Parliament, he says, cannot alter the manner of representation. Discussing the rotten boroughs, Locke writes :

"Most people think it hard to find one, because the constitution of the legislature being the original and supreme act of the society, antecedent to all positive laws in it, and depending wholly on the people, no inferior power can alter it. And, therefore, the people when the legislative is once constituted, having in such a government as we have been speaking of no power to act as long as the government stands, this inconvenience is thought incapable of remedy." ①

Locke's remedy is astounding. The executive, he says, acting on the maxim '*Salus populi suprema lex est*' may alter the representation. When the executive does this "it cannot be judged to have set up a new legislative, but to have restored

(1) Second Treatise, §157.

the old and true one, and to have rectified the disorders which succession of time had insensibly as well as inevitably introduced?"⁽¹⁾ Locke's use of the word 'inevitably' shows that he realised that a constitution, set up by the pactum unionis in some dim and distant past, could not possibly retain its original form. Yet, in spite of this recognition and in spite of his care to hedge the king about with restrictions, he is forced to fall back on the very doubtful expedient of allowing the king to alter the constitution in so far as representation in the Commons is concerned. By Locke's own showing, any alteration made in the constitution by parliament could be justified on the grounds that parliament was merely bringing it back to its 'old and true' form'. The fact that Locke has to employ the prerogative in such a case demonstrates how loathe he was to allow to parliament the use of its ordinary and normal powers of legislation for constitutional legislation. Parliamentary

(1) Second Treatise, §158.

reform was not a subject which interested statesmen of our period, so it is difficult to judge of the effect of Locke's suggestion concerning the rotten boroughs. But we do know that 'Julian' Johnson urged parliamentary reform immediately after the Revolution and that, unlike Locke, he considered parliament as the appropriate body to make the necessary change.

Thus Locke, unlike Blackall and Swift, would not admit that parliament was omnipotent. Nevertheless, it was the highest power in the state and to it was due "all the obedience which by the most solemn ties any one can be obliged to pay." So long as parliament did not use its legislative powers to alter the constitution it was sovereign. Locke laid down definite standards by which the alteration of the constitution might be judged. His followers were not so explicit in this respect. They agreed in principle that for the people to put themselves unreservedly under any governmental authority was to surrender all their natural rights. Although Defoe said :

"The parliament of England consisting of the

Kings, Lords and Commons are to me the supreme channel of power, the great collective body in miniature,"^①

he still meant that the ultimate power was the "great collective body" itself. The whole body of the people would have the same right to resist a parliament as a king if their liberties were invaded.^② And Hoadly, as we have seen, asked why parliament should not be resisted any more than a king if it tried to change the constitution from a limited to an absolute monarchy.

If the people's rights and liberties had been imperilled under an absolute monarch, would they not be safe under an absolute parliament in which the people were represented? Why was there a reluctance to give parliament unlimited power? There were two reasons. The first was born of prejudice. The second was based on the constitution of parliament as understood by Englishmen in the seventeenth century.

(1) Jure divino, etc. (1706) p. vii.

(2) Original power of the collective body of the people of England, etc. (1701) in Works (1703), i, p. 139.

See also Appendix I, Note 83.

Firstly, there was marked suspicion of the power of parliament. The two Houses had too often in the past been servants of the king and there was a strong fear that they might willingly or unwillingly concur with the king in the destruction of the people's rights and privileges.^① "The people," said a writer, "have their privileges, which the king and Parliament cannot take from them. If, for example, a parliament should treat with the king for making an absolute change of the form of government, for abolishing the use of parliaments and for depriving the people of all their privileges, charters and immunities, the people might justly provide against these violations."^② Defoe had a profound distrust of parliament. In several works he violently attacked the subserviency of the two Houses and exposed the corruption which was only too prevalent in the House of Commons.

(1) This was why the two Houses tried to keep the king's ministers from being members of the House of Commons.

(2) A defence of their majesties King William and Queen Mary. S.T.Wm.III, i, p. 191.

Secondly, the constitution was regarded as something fixed and unalterable. Thus the Tory taunt that the Whigs were republicans was absolutely without foundation. Both Whigs and Tories were staunch supporters of the constitution consisting of the king as executive and the king-in-parliament as legislature. At the present day constitutional lawyers would agree that parliament, since it is sovereign, might, if it chose, destroy the House of Lords or the monarchy or might even abolish itself. We have seen that Blackall deduced the same conclusion from his theory of sovereignty in a state. His view was exceptional. Few (even among the Tories) would have been so bold as to assert that parliament might interfere with the 'lex parliamentaria.' The English constitution, though ill-defined, was felt to be greater than either king or parliament. Consequently there was a fear that one branch of the legislature might gain such an ascendancy over the other parts as to impose its will to the destruction of the constitution. The rival

theories of the constitution were all based on the balance of these various parts.^① The balance weighted too much on the side of the Houses might be dangerous to the monarchy. Too much power invested in the monarchy might be dangerous to the Houses. And, omnipotency granted to the king-in-parliament might be dangerous to the constitution. In such a case of the subversion of the equally balanced constitution, resistance is justified. Did the constitution provide no legal check on such attacks upon itself by one or more of its constituent parts? The answer is to be found in the constitution of parliament.

We have seen that seventeenth century lawyers could speak at the same time of the sovereignty of parliament and the sovereignty of the king. Although thinkers like Whitelock contended that the king in parliament was the greater sovereignty, they had to admit that the king by having the right to summon and dismiss parliament was the effective sovereign.^① This problem still remained after 1689 as we see when, for example, Locke refers to the legislature only being supreme

(1) See Appendix I, Note 84.

when it is in session. After the Revolution, parliament sat every year and no king dared to dispense with it.⁽¹⁾ Therefore the opportunity for parliament to secure the exercise of its sovereignty was provided. But the problem of the inter-relationship of the three constituent members still remained. The solution of this problem proved to be the most perplexing task which political theorists had to face after the Revolution. It was not a practical problem - for in practice it did not arise - but it was still of great theoretical importance, and was in fact, though it was not always recognised, the pivot on which the doctrine of resistance ~~was~~ turned.

Writers on the side of popular government would not assign to any one branch of the legislature a preeminence over the two other branches. They relied on the balance of these parts to preserve the constitution. One thinker immediately after the Revolution said: "Their power is so

(1) "When the prince hinders the legislative from assembling in its due time" the constitution is altered. - Locke, Second Treatise, § 215.

equal in the great point of legislature that one cannot properly say, that one is greater or less than another." All have negative voices and the consent of the whole is required both for the making and the abrogating of a law.⁽¹⁾ The same thing was said by Hoadly, in only slightly different language, in 1710. But he further emphasised the balance of the legislature by stressing the equal partnership of the House of Commons and thus aiming a blow at Leslie and his followers who denied this equality. The members of the House of Commons, said Hoadly, "are something more than a sluice to a mill, which is drawn up and let down entirely at the miller's pleasure."⁽²⁾ Leslie called this "the mob and rebellious principles of forty-one." He denied that the king could be restrained by co-ordinate legislative powers.

(1) Reflections upon the late great Revolution. S.T.Wm.III, i, p. 254.

(2) The original and institution of civil government discussed. 2nd ed. (1710) p. 111, in Works, ii, p.242.

"This is the old notion", he said, "of the king being one of the three estates, which I have sufficiently exposed already."⁽¹⁾ Leslie's position was untenable, for his theory that the crown was sovereign was quite out of keeping with the constitutional consequences of the Revolution. He clung to the old doctrines of divine right and non-resistance, doctrines which would not solve the problems of the post-Revolution constitution. He was still putting the king above the law and above the king-in-parliament and in so doing set himself against the main stream of political philosophy. But even when we admit this, we must allow that the problem which Leslie propounded was the same problem which faced his opponents. This problem was thus expressed by Leslie:

"They who would set up the two Houses of Parliament as powers co-ordinate with the king, these make three sovereigns. And

(1) Rehearsal, May 12, 1708, no. 322.

And Leslie's notion, said Hoadly sarcastically, "is the voice of the people, i.e. the voice of Belzebub." - The original and institution of civil government. p. 110, in Works, ii, p.241.

if they happen to interfere, or have different thoughts concerning their respective rights (which is almost impossible they should not, each being judge for himself) then there is no remedy but the sword, which cannot be sheath'd till one conquers the other two, as the Commons did in the late Civil Wars." ①

Leslie was right in arguing that a theory of co-ordinate powers was fraught with danger. He must have recalled the disputes, for example, between the House of Commons and the House of Lords in 1701^② and how that dispute was ended only by the action of the king in dissolving parliament. And he was also fairly near the truth when he said that three co-ordinate powers made three sovereigns. His inference that disputes among the three members would inevitably lead to bloodshed till one conquers the others was perhaps pessimistic but it could not be denied by his opponents. The central idea of co-ordinate powers was that no member ought to gain an ascendancy over the two

(1) Best of all, etc., pp. 29-30.

(2) Cf. Swift, A discourse of the contests and dissentions, etc. (1710) and Defoe, The original power of the collective body, etc. (1701)

others. Could this theoretical arrangement be maintained in practice ? Leslie was sure that it could not, and the only remedy he could offer against these dangers was to make one supreme power, namely, the king. Hoadly's solution was to make the people supreme. But this, it could be argued, was making a fourth supreme power.⁽¹⁾ It was not, however, making four sovereigns but one, for the people could not and were not regarded as a fourth co-ordinate power with the three members of the legislature. The people were ultimate sovereign, if the three co-ordinate members of the legislature failed to work in unison. Of the three members, Leslie wished to make the king supreme. Could not the opponents of regal sovereignty make the two Houses supreme since their avowed aim was to control the king? Before answering this question, it would be advisable to dispose of a quotation from Grotius that was frequently cited to justify the part taken by the Convention at the Revolution. This

(1) Cf. Davenant, Essays upon peace at home, etc. See Appendix I, Note 85.

quotation and the frequent references to it might suggest that there was a body of opinion in favour of recognising the superiority of the two Houses over the king. This is the passage from Grotius:

"If a king should have but one part of the sovereign power, and the senate or people the other, if such a king shall invade that part which is not his own, he may justly be resisted, because he is not sovereign in that respect. Which I believe may take place, though in the division of the sovereignty, the power of making war fell to the king, for that is to be understood of foreign war : since whoever has a share of the sovereignty must have at the same time a right to defend it. And when the case is so, the king may, by the right of war, lose even his part of the sovereignty." ①

(1) De jure belli ac pacis, Bk. 1, chap. iv, xiii. This passage is cited, for example, in the following works :

Allix, An examination of those who refuse to take the oath of allegiance. S.T.Wm.III, i, p. 306.

Important questions of state, law, justice, and prudence, etc. S.T.Wm.III, i, p. 167.

Some short considerations relating to the settling of the government. S.T.Wm.III, i, p. 176.

Tindal, An essay concerning obedience to the supreme powers, etc. S.T.Wm.III, ii, p. 434.

Defoe, A speech without doors, p. 6.

The divine rights of the British nation and constitution vindicated, p. 17.

It was also quoted by Stanhope at the Sacheverell Trial. S.T., xv, 129.

Kettlewell, the non-juror, attacked the use made of this passage. He said it was directly contrary to the Militia Act. (see above, p. 30.)

- Christianity, a doctrine of the Cross (1691) in Works, ii, p. 180.

But there are two points which prevent us from accepting this passage as an indication that the two Houses ought to have a controlling power over the king. The first comes from the quotation itself. Grotius speaks of a divided sovereignty. If the king, he says, has only one part of the sovereignty and he invades the sovereignty of the other part (which may be in parliament) he may be resisted. The senate (by which word we may understand the two Houses) does not have a permanent superiority. Grotius merely allows to it the right to defend its own share of sovereignty. And, furthermore, Grotius does not say whether resistance is to come from the governmental institution possessing the share of sovereignty, or from the people, though it may be inferred that he means the senate. But the second point, which comes from the writers who quote Grotius, is the more important. They quote him to justify resistance to the king - resistance by the body of the people, not resistance by the injured partners of sovereignty, acting constitutionally. This passage from Grotius was used by resistance

theorists to defend resistance and the Revolution. It was virtually the argument of Locke. It was the common argument based on the dissolution of government. The legislature is dissolved by the encroachment of one member, who having a share of the sovereignty, endeavours to possess it all. The two Houses are therefore also technically dissolved and resistance comes from an inarticulate mass of subjects.^①

Samuel Johnson was the stoutest advocate for the doctrine of resistance in William's reign. He brought arguments from the history of England to prove his contention that parliament had the right to depose the king. The objection that the two Houses do not form a parliament and that they cannot meet without the king's writ, he tried to overthrow by

(1) We have, fortunately, a clear statement on this point from Defoe. He considers whether, when the king encroaches on the powers of the two Houses, the whole power should devolve on them. Although he cited Grotius, he concluded that the power does not fall to the Houses but to the people. See A speech without doors. (1710) p. 12.

maintaining that the king had no prerogative of not summoning parliament, and that according to the law of England (before it was abused) parliament could meet on its own authority. Yet in spite of this ingenious argument, Johnson could not envisage a peaceful resistance by the two Houses but must preach an armed resistance by the mass of the people.

Consequently, a theory of the superiority of the two Houses was untenable for two reasons. Firstly, it was inconsistent with the theory of equal co-ordinate powers. Secondly, it was not apparent how the two Houses could control the king, even if, in theory, it was allowed to be desirable. We have already discussed the first reason. We shall now discuss the second.

The parliamentary control of the king was the most perplexing problem which statesmen and theorists had to face after the Revolution. It was because they could conceive of no satisfactory constitutional provision that they were forced to adopt the doctrine of resistance. However much men might speak of equal co-ordinate powers, they could not overcome the difficulty

of demonstrating how the king was only equal with the others. Arguments which began by the assertion of three equal powers usually ended with the admission that the king was actually superior.

The difficulty was caused by the dual capacity of the crown. The executive power was allowed to be solely in the king by all shades of opinion. That was perhaps the only part of our constitution about which men had no doubts. Leslie accused his opponents of making three sovereigns, but they were forced to ask themselves whether, in fact, there were not at least two - legislature and executive. Leslie held that there could be only one, and they, too, came very near to admitting the same thing. The question which even resistance doctrinaires asked themselves was: Can there be two supreme powers in a state - the king and the king-in-parliament? What actually was the inter-relationship of the three branches of the legislature? Were the two Houses, in fact, as well as in theory, co-ordinate powers, or did the king have a superiority over them? The answer to these questions was no foregone conclusion.

That a statute could be enacted or repealed only by the joint action of King, Lords, and Commons was not denied. But men put different interpretations on the significance of veto or assent of each of the partners. The royalist point of view was that, although parliament had a share in making laws, it was a subject's part, not a sovereign's. The two Houses were called into consultation by the king, and no law could be passed or repealed without their consent, "which is a great security indeed of their being well governed."^① But it was merely "a ministerial sort of power."^② The power which gives force to laws is the sovereign power and this rests solely in the king. The real legislative power is the power of sanction, and no bill can become law until the king gives his consent.^③

(1) Kettlewell, Christianity a doctrine of the Cross. (1691) in Works, ii, p. 180.
See Appendix I, Note 86.

(2) Tyrrell, Bibliotheca^{politica}, p. 233. See Appendix I, Note 87.

(3) Tyrrell, op. cit., p. 233.
Jus sacrum, p. 40. See Appendix I, Note 88.

The Whig theory was that the Houses were coordinate powers with the king and that their share in the passing or repealing of laws was equal. How could the Whigs meet their opponents' objection that the king, by his right of veto, had really the enacting power? William vetoed important bills. And although Anne was the last British sovereign to exercise this power, this was not observed in her reign. Even if it had been observed, it was too soon to pronounce any verdict on what came only gradually to be recognised as a constitutional convention. Therefore, the king's right of accepting or refusing a bill being admitted,^① could it not be said that the Houses had the same right of accepting or refusing? Logically, this has to be conceded. But even the Whigs had to confess that the person who had the last word in legislation had the apparent superiority.

(1) One writer did assert, somewhat boldly before the Convention met, that the king's veto and power of summoning and dissolving parliament should be considered. See Good advice before it be too late, etc. Som. T., x, p. 201.

Tyrrell, a lawyer and a staunch Williamite, speaking through Freeman in his Bibliotheca politica, made the following concession :

"I have always supposed that the king continues still supreme, that (as the *Modus tenendi parliamentorum* declares) he is principium, caput et finis parliamenti : that is, he can call and dissolve parliaments when he pleases...even in the legislature itself, that the king hath more eminently (though together with the parliament) a supreme enacting power, without which it cannot be a law." ①

The king, he continued, was the supreme executive power, and by giving consent to a law, he gave the ultimate authority unless one could suppose that there could be two supreme powers in the state at one time. ② Thus, Tyrrell regarded the king-in-parliament as the sole and supreme law-making body in the state, but it was not the sovereign body. The king was supreme and there could not be two supreme powers. Stillingfleet was faced with the same problem. Though he justified the Revolution and the new oath of allegiance to William he still regarded the king as sovereign. Monarchy was the oldest form of

(1) Op. cit., p. 238.

(2) Ibid.,

government, he said, and it had always been esteemed the best especially where it was limited by laws passed by the people.^① He did not think it inconsistent to speak of a limited sovereignty. Masters, opposing absolute monarchy, pointed to the preambles to statutes wherein we read that they are enacted not only by the king but by the authority of the Lords and Commons in parliament assembled. "Is it not very evident", he asked, "from hence that the parliament hath a share in the legislative power which is an eminent branch of the supreme power in this kingdom?"^② He does not say that sovereignty consists of the legislative power. It is merely "an eminent branch." And like Tyrrell, while he defends the supremacy of parliament and the coordinate powers of the Houses, he concludes : "There can be no authority in our kingdom superior to that with which the king is invested."^③

(1) A discourse concerning the unreasonableness of a new separation, etc. (1689) S.T.Wm.III, 1, p. 605.

(2) The case of allegiance considered. (1689) S.T.Wm.III, 1, p. 322.

(3) Ibid., p. 324.

While, therefore, there was serious difficulty in apportioning the exact degree of superiority possessed by the king as a partner of the legislature, the issue was further complicated by his second capacity, namely, the executive. The power which gives laws to all, it was held, was the supreme power and laws become mere cyphers if they are not put in execution. The executive, whose function it was to execute laws appeared consequently to be the ultimate sovereign power. The king's dual capacity provided this dilemma. As a constituent part of the legislature, he could not be subordinate except to the whole. But since he was supreme executive he could be controlled only through parliament by his own concurrence. Locke expressed this dilemma when he said :

"The executive power placed anywhere but in a person that has also a share in the legislature is visibly subordinate and accountable to it, and may be at pleasure changed and displaced; so that it is not the supreme executive power that is exempt from subordination, but the supreme vested in one, who having a share in the legislative, has no distinct superior legislative to be account-

able to, farther than he himself shall join and consent, which one may certainly conclude will be very little." ①

We must come to the conclusion, therefore, that there was no conception of parliamentary sovereignty in our period. Blackall did enunciate a fairly complete system of parliamentary sovereignty in 1704 but he vitiated his theory by recanting in 1708. On the question of sovereignty we may distinguish three broad classes of opinion. The first class consisted of Jacobites and extreme Hanoverian Tories who still regarded the king as sovereign. Parliament was consequently subordinate. The second class is represented by moderate Tories and some Whigs who held that there must be some supreme power in the state, and since the king was no longer sovereign, but was limited by legislation, parliament must be supreme. But they did not regard parliament as the ultimate power against which there could be no appeal, for they allowed resistance to the king. The Tory section of this

(1) Locke, Second Treatise, § 152.
See also Appendix I, Note 89.

group adhered to the doctrine of non-resistance and regarded any case of resistance as an exception to that rule. The Whig section made the exception the rule and deduced from it the doctrine of resistance. The third class is composed entirely of Whigs, including such thinkers as Locke , Defoe and Hoadly (resistance doctrinaires like the Whigs of the second class) who regarded parliament as having an exclusive right of legislation but not an absolute power. Parliament was debarred from constitutional legislation. Finally, all three groups were unanimous in agreeing that parliament could not controll the king's actions as executive. It was a conception of divided sovereignty. Parliament was supreme as legislator, the king as executive. In their own departments each was sovereign and they must be kept separate. If parliament transferred any of its legislative power to the king, then it destroyed its own exclusive right to legislate and thus destroyed its own sovereignty. But Such an act would be legal and without a

legal remedy. But according to the Whigs it would be a subversion of the constitution and a breach of trusteeship and would entitle the people, by the theory of the original contract, to rebel.

CHAPTER SEVEN

Conclusion

CHAPTER VII

CONCLUSION

The Revolution was carried out by a small group of statesmen who, in their breadth of outlook, were far in advance of the rest of the nation. But fear of popery was greater than fear of despotism, and loyalty to the Church of England stronger than loyalty to the monarchy. Hence, the nation, as a whole, acquiesced in the Revolution Settlement. But to the nation, especially to the Tories, it involved a sacrifice of principles hard to be borne. A change of dynasty in 1689 could not immediately change the heart of a people and it could not be expected that the doctrine of non-resistance which had become 'the distinguishing character of the Church of England'^① should be discarded in a day. The nation was quite unprepared for the catastrophic events of 1688/9 and there was no political philosophy ready to take the place of non-resistance.

(1) Lake's dying confession. Cited by Lecky, History of England, i, p. 9.

At the time of the Revolution there were many pamphlets which upheld the right of the people to resist their king. But these were isolated writings of individuals and the views they expressed were personal. They formed, however, the basis of the doctrine of resistance, and we have drawn largely on them for our analysis of the doctrine.^① Abdication was the official interpretation of the Revolution, and this was held to conform to the doctrine of non-resistance.^② Although the oaths against resisting the king were repealed, there is some justification for believing that this was done, not to give sanction to the right of resistance, but to simplify the new oath of allegiance. The new oath had to be taken to a de facto king, and no one was required to express an opinion on the king's right. It is

(1) See above, chapter 2.

(2) Cf. "It must not be forgotten, that the English clergy claimed the phraseology of the Bill of Rights in support of their contention that the Revolution did not transgress the principles of non-resistance." - Figgis, Divine right of kings. 2nd ed., p. 173.

also significant that the first statute to recognise William's right was passed by a Tory House of Commons. The failure of an abjuration bill to pass until 1702 also showed that politicians were unwilling to deny James's *de jure* title. In William's reign, pamphlets which argued for the right of a people to resist tyranny, usually contained in addition the argument that it was lawful to swear allegiance to a *de facto* king, which, though not inconsistent with resistance, obviously weakened the resistance theory. The conquest theory, based on a modification of the doctrine of non-resistance, was usually reinforced by the *de facto*. In fact most pamphlets contain something of each theory. Stress is often put upon one, but whichever theory is adopted as the primary, the others are brought in as secondary arguments. In fine, the dominating theory put forward to support the Revolution in William's reign was the *de facto*,

and the writings of Locke and Samuel Johnson, in which it was not only not made use of but was condemned (implicitly by Locke, and explicitly by Johnson) are noteworthy for their isolation in this respect. These two writers stand almost alone in basing the new government exclusively on the justice of resistance to James and the subsequent consent of the people in the election of William.

The first signs that indicated that the doctrine of non-resistance had lost its undisputed sway were the Whig attacks upon it. They endeavoured to bring it into disrepute by showing that, but for it, James would never have tried to do what he did. The Tories knew, in their inmost hearts, that this was true, and it is natural, therefore, that we should hear very little of that doctrine in William's reign except from Jacobites. That doctrine was so closely bound up with the Church of England that we could not expect the clergy, who were mostly Tories, to preach non-resistance to a king whom they regarded as lukewarm in their interests,

even if they did not regard him as a usurper as well. But when Anne came to the throne, they found a monarch who was not only a staunch Church of England woman, but a daughter of James II. The clergy came into their own again, and they marked the occasion by reviving the doctrine of non-resistance. This revival brought a corresponding strengthening in the Whig attitude to the theory of resistance. And now for the first time since 1689 it is possible to say that the right of resistance was formulated into a doctrine and became an official part of Whig teaching. But it never became a doctrine capable of clear definition such as the doctrine of non-resistance had been before 1688. We should be scarcely justified in calling it a doctrine at all had not contemporaries used the word. On the other hand, if resistance never attained the sharp definitions which non-resistance had had, it is equally true to say that non-resistance after 1689 lost much of the clearness which it had possessed.

Resistance doctrinaires in our period were on the defensive except in 1709/10. But their defence constituted a very vigorous opposition to the doctrine of non-resistance, which, under the onslaught, tended to break down. Both the Whigs' teaching and their ultimate success in securing the Hanoverian succession forced the Tories to weaken in their attitude to certain parts of their doctrine. We shall refer to this later.

Had there been no succession problem, the history of the rival doctrines would probably have taken a different course. That problem not only accentuated the rivalry but confused the issues. An essential part of the Caroline doctrine of non-resistance was indefeasible hereditary right, and we have seen how the Tories tried to base Anne's title on heredity and so justify their propagation of non-resistance. If James was the son of James II, then he ought to have succeeded in 1702 instead of Anne. The Tories, therefore, professed to believe that he was supposititious, and since he could not be

accepted in 1702, he could not be accepted on Anne's death. But by strict hereditary right, there were other claimants to the throne who came before the House of Brunswick. The Hanoverians were thus excluded. The Whigs, consequently, realised that the only guarantee of a Hanoverian succession was the recognition of succession by parliamentary right. The Whigs did not deny hereditary right. But it must be parliamentary and not indefeasible. A parliamentary title depended for its validity on the justice of the Revolution and therefore on the recognition that James was justly resisted.

^{Apart from}
~~Setting aside~~ the Jacobite question, how did the rival doctrines stand in relation to the Revolution? We have come definitely to the conclusion that the Revolution was not based on any theory of the right of resistance; but rather that the doctrine was evolved to justify an accomplished fact. The Whigs came to hold the belief that only by accepting the doctrine could

the Revolution be justified. To uphold non-resistance was to condemn all that was done in 1688 and all the consequences which flowed from that revolution.

A fact that cannot be ignored is that the Tories never openly condemned the Revolution. How, then, did they join themselves with the Whigs in supporting the same cause and at the same time differ on the means by which that cause was achieved? The Tories offered alternative solutions.

Firstly, they submitted that the doctrine of non-resistance was still as valid as it had been before 1688 and that the Revolution had not affected it in any way. Non-resistance was a general maxim essential for all governments. But all general rules are capable of admitting exceptions, and the Revolution was one of these exceptions. One deviation from a general maxim does not nullify it. It would both be impossible and highly undesirable for any one, while, inculcating a general maxim, to attempt to indicate what exceptions to the rule were admissible. Each

deviation must be examined on its own merits when it arises. The value of non-resistance would be lost if its advocates hedged it about with possible exceptions which no man could foresee. The doctrine of non-resistance was still the doctrine of the Church of England. Every clergyman had to subscribe to it by law, and it was the duty of every member of the Church to accept it.

Secondly, some Tories modified the doctrine. Non-resistance, they said, meant non-resistance to the supreme power which was parliament. But James, and not parliament, had been resisted in 1688 and, therefore, according to the doctrine there had been no resistance. Thus they had to admit that James, as executive, had been resisted, and that such resistance was permissible under the doctrine of non-resistance. But at the same time they taught that Anne could, on no account, be resisted, and confirmed this view by their insinuation that the Whigs by their doctrine of resistance would permit of Anne being

resisted in favour of the Pretender. Thus these Tories became entangled in their own theories. They tried to reconcile resistance to James with non-resistance to Anne - positions which could not be reconciled.

Tories who denied resistance altogether, had, if they were not to be branded as Jacobites, to profess to believe that the Convention's decree of abdication was correct, that James being alive had no heir, but that on his death in 1701 he could transmit his right to Anne, and lastly that an act sanctioned by Anne to give the succession to the Hanoverians was valid since she was a legitimate sovereign. William was, consequently, if not a usurper during the ~~the~~ whole of his reign, at least no more than a regent for James II from 1689 till the latter's death, and a usurper from 1701 till 1702 during which period he excluded Anne from her inheritance. These Tories, therefore, could still uphold the theory of the divine right of kings and indefeasible right of succession. There were,

it is true, a large number of Tories in Anne's reign who professed to believe in the divinity of kings. They might be potential Jacobites but there was more sentimentalism in their profession than the Whigs were willing to allow. But the Tories who were definitely not Jacobites and who sincerely approved of the Revolution as an extreme act of necessity, being compelled to admit resistance and abandon divine right and indefeasible hereditary succession, clung all the more tenaciously to a doctrine of non-resistance enunciated in general terms. The Revolution might have compelled them to abandon certain aspects of the old doctrine but nothing would compel them to sacrifice the essence of the doctrine which, according to them, was that there must be a supreme power in every state against which there could be no resistance.

The Tories said that the doctrine of resistance was a denial of sovereignty in

a state. Resistance doctrinaires, they asserted, were republicans and anarchists. If the Revolution was just, why did the Whigs not preach non-resistance to the Revolution Settlement which they had founded ? To tell the people that they have a right to resist is to incite them to rebel against the work of their own hands. There was force in this aspect of the Tory criticism. The Whigs found it a difficult argument to combat and at the Sacheverell Trial, as we saw, the Commons had an awkward task to prove that their doctrine of resistance did not imply a desire to rebel against Anne.

But the bare assertion of the Tories that there must be a supreme irresistible power in every state does not take us very far unless we know what the constitution of that supreme power is. Apart from the Jacobites or very reactionary Hanoverian Tories who held the Caroline tenet that the king was sovereign, there was no clear evidence that the Tories as a party had any definite conception of the locus of the supreme power.

Berkeley added a paragraph in the third edition of his Passive obedience in which he said that the doctrine of non-resistance against the supreme power could be applied only when one knew what that supreme power was. Once it is ascertained, then non-resistance was a moral duty with the strongest obligations on the consciences of subjects. But Berkeley did not give the clue to the application of his doctrine. To preach a doctrine of non-resistance to the supreme power without stating what that supreme power was, was useless at a time when neither politician nor lawyer could give a definite ruling on the locus of sovereignty. Casuists could place it anywhere that suited them best for the moment, - at one time in the king, at another time in parliament.

The Whig reply to the general enunciation of this doctrine was that there was no supreme power in the Tory sense. The Revolution was an exception in the normal life of the people but it was based on fundamental principles of

politics and the Revolution Settlement, based on that Revolution, could be justified and sustained only by an acceptance of these principles, the basic one being a right in the people to rebel in exceptional circumstances against the highest governmental authority however it may be constituted.

Since the Whigs were unanimous in agreeing that the king was under the law they could not regard him as the possessor of sovereignty. The king had to govern according to the law agreed upon in parliament which was, in the sphere of legislation, the highest authority. But they did not agree with the Tories that if the king was not sovereign then it must follow that parliament was. Of the two limitations put upon the power of parliament by the Whigs we may dismiss that which relates to natural law, for the doctrine of resistance neither created this limitation nor was it primarily concerned with it. When,

Locke or Defoe spoke of what parliament might not do contrary to natural law their meaning was probably no different from our meaning at the present day when we speak of what parliament cannot do.^① But the second limitation definitely restricted the power of parliament. This was the essential part of Whig teaching that the constitution cannot be altered so long as it subsists. That meant that the supreme power, wherever it might be lodged, could not alter it. This is illustrated, for example, by the opposition to the theory of Blackall and Swift that the supreme power may, if it chooses, change the form of government from a monarchy to a republic. But it did not follow that parliament

(1) Dicey, Law of the constitution (8th ed., 1915), p. 69.

Cf. Blackstone. He wrote: "Upon these two foundations, the law of nature and the law of revelation, depend all human laws: that is to say, no human laws should be suffered to contradict these." - Commentaries (9th ed., 1783), i, p. 42. If a human law, he says, should allow us to commit murder, "we are bound to transgress that human law." - Ibid., p. 43. Yet Blackstone's state had a sovereign body. In every state there must be "a supreme, irresistible, absolute, uncontrolled authority, in which the jura summi imperii, or the rights of sovereignty reside." - Ibid., p. 49.

would have to be resisted if it overstepped this limitation. Defoe and Hoadly did state explicitly that parliament may be resisted but their meaning was not clear. They were probably thinking along the same lines as Locke, and Locke did not require to deal with this question; for, by his theory of the dissolution of government, there can be no separate resistance either against the legislature exclusive of the executive or against the executive exclusive of the legislature. Resistance is allowed only when the whole constitution is dissolved. The people are left without any government at all and resistance, therefore, is against any person or body who attempts to prevent their setting up a new government. If parliament made the king absolute then that put the king above the law and deprived parliament of its exclusive right of making laws. Parliament, by altering the executive, altered itself. The Whig theory, therefore, was that the constitution was fixed, and unalterable by constitutional methods.

The most pertinent criticism against Locke and his followers is that they could not envisage a state with a governmental organ with the power to adapt the constitution to the changing needs of the people. Burke, when writing of the Revolution, spoke of that Revolution as an example of the power of a state to adapt its institutions. But he was obviously reading his own meaning into the changes made at that time. That any institution had been altered in 1688 to suit changing conditions the Whigs would have been the last to admit. The Revolution was the expression of the people's right to preserve the old constitution intact.

If there was no constitutional method, how could the constitution be preserved? The Revolution was undertaken to prevent the king from becoming absolute. How was the king to be controlled? Even if the Whigs had admitted with the moderate Tories that parliament was absolute and irresistible, that would not have solved the problem of executive control. The Tories had suffered in 1688 and had resisted a

king who threatened to destroy their church. Could they not offer the Whigs an alternative to their doctrine of resistance by suggesting a constitutional remedy which would take the place of revolution ? They could offer none, for most Tories still regarded the power of parliament as a concession from the king so that the two Houses were his servants and by no means co-ordinate with him. Consequently it was impossible for them to admit that the king might be controlled by his servants. The Whigs regarded the Houses as equal co-ordinate partners with the king in legislation, but they, too, could conceive of no constitutional method of controlling his executive actions. We have seen, firstly, that the Whigs were unable to demonstrate how the king was not actually superior to parliament by his right of veto and consent. He possessed the ultimate enacting power. As a Tory pamphleteer said, although it was true a bill

negatived by the House of Commons or by the House of Lords could not become law, yet threescore negatives could not make a positive. The king's fiat alone stamped authority on a bill and made it law. Secondly, the king was not only an essential partner of the legislature but he possessed the whole administrative power and, as Locke pertinently said, the king was not likely to concur as a constituent member of parliament in any proposal calculated to oppose his actions^{as executive}. Consequently, of the several partners in the constitution the Whigs were inclined to agree with the Tories that the king was the greatest, not for his executive capacity alone but for that combined with his share in legislation. We saw in the conclusion to the chapter on parliament that there was a dual or divided sovereignty. But this did not mean that the legislature and executive were separate, as Montesquieu thought, for although each was supreme in its own sphere, each had a common member - the king - who formed the bond between them. Locke, Defoe

and other thinkers based liberty on a division of power, not on a separation of functions. The legislature and executive were never separate in England, nor did the Whigs or Tories wish to separate them. But they desired that an even balance should be kept between them.

It was the fact that the legislature and executive were so closely entwined that revolution took place in 1688. When the even balance which ought to have been maintained between them was lost, revolution was the only way of rectifying it. Whigs in William's reign constantly referred to the act passed in Elizabeth's reign which made it treason to say that parliament did not have the power to alter the succession. Their attempt to apply this statute to the proceedings of the Convention was futile for the Convention was not a legally constituted parliament. James could have been legally deposed only by an act to which he had given his consent. No amount of casuistry could prove that the Revolution was not illegal. The divine right

theorists held that an act of parliament could not alter the succession but in addition to that argument they could also maintain that James was not legally deposed even according to English positive law. Nelson, the non-juror, Swift tells us, standing on the letter of the law, said to him that the succession could be altered only by a parliament summoned by the king's writs. The Convention, therefore, was illegal, the abdication was illegal and everything done on the Revolution foundation was illegal. Swift's comment is that that means that a king who acts like a devil cannot be deposed except by an act of parliament to which he must consent. What is the use of a limited monarch, asks Swift, if the king may not be resisted, except legally, which is impossible. To Nelson's scruples about the legality of the Revolution, Swift concludes : "I desire no stronger proof that an opinion be false than to find absurdities annexed to it." ^①

(1) Sentiments of a Church of England man in Works, iii, pp. 71 et seq.

If, then, the letter of the law was to be used to defeat political justice, there must be some higher law in the state than positive law. Since parliament was not in a position to curb the will of a tyrannical monarch, then, according to the Whigs, that duty must fall to the body of the people. To justify this position the Whigs offered a revolutionary basis of political obligation.

They held that the king was not God's vice-gerent, and that therefore resistance to him could be no sin against God. Every government was a divine institution in the sense that God ordered all things which were for our good, and government was for our good. The particular form of government in each country was determined by its own needs. In England it was monarchical because monarchy suited the genius of the English people. But it was not an absolute monarchy, but limited by the laws of the constitution, which consisted of parliament with the sole right of making and repealing all laws, and a king as executive with the sole power of administering these laws. All govern-

mental power originally came from the people and it was exercised by the government only as a trustee. That there was a contract between the king and the people came to be the official creed of the Whigs, but it was not stressed. Most emphasis was put on a tacit understanding between ruler and ruled that allegiance was due only so long as the government preserved the fundamentals of the constitution. Allegiance was due to the crown, that is, to the person who filled the office, not to a king by reason of his birthright. The English constitution was the heritage of the people and it was their duty to hand it on to their posterity unaltered. The Whigs, who were mainly responsible for altering the balance of the constitution, would have been the last persons to admit it. Locke, Defoe, Hoadly, and other advocates of resistance, when they spoke of self-preservation as the basis of the right of resistance, really meant the preservation of the constitution. And when the doctrine is stripped of all its superfluities, it will be found to have this as its central idea.

We can appreciate, therefore, why the Whigs held a doctrine of resistance until a constitutional method was evolved whereby parliament not only gave law but superintended its due execution. When that method was found there was no longer any justification for the doctrine. The remedy was the link between parliament and executive and that link was the system of cabinet government, which, although it had its beginnings in, or even before, Anne's reign, only evolved slowly throughout the eighteenth century. So far as it was observed at all, it was held to be highly undesirable. It must be allowed that a doctrine of resistance would appear to the Whigs, and even to the Tories, as more justifiable than the degrading alternative of depriving the king of all personal share in the government. Parties still in their infancy constituted for most men a schism in the nation. It was the ambition of both parties that this wound in the nation should be healed, and that ministers should be servants of

the king and not of a party. By place bills both parties unconsciously tried to thwart the growth of ministerial responsibility. Their object was to prevent the king from influencing the deliberations of parliament through placemen in the king's pay. But the real effect of the measures would have been to prevent the rise of cabinet government. Both Whigs and Tories were content that in ordinary circumstances ministers should be liable to impeachment. This control was at best retrospective and individual and could not have diminished the king's personal influence in politics. That he should govern in person and not through responsible ministers was accepted by both parties as the normal working of our constitution. But, fortunately for our constitution, cabinet government developed in spite of the theoretical objections to it. We shall be less inclined to blame thinkers in our period for failing to appreciate the importance of ministerial responsibility when we remember that cabinet government is not even mentioned

by Blackstone in his Commentaries, showing how little impression this most important convention had made on constitutional lawyers of the eighteenth century. When this constitutional method of controlling the executive had secured a place in our polity (after George III's attempt to exert his personal influence had been defeated) there was no longer any need for the doctrine of resistance.

A French traveller^① in England in 1810 observed that parties were mainly divided over rival doctrines of resistance and non-resistance. But the doctrine of resistance held by Radicals was quite different from the Whig theory of the Revolution. Although they professed to draw their inspiration from the Revolution (witness their Revolution clubs) it is quite clear, as Burke said, that they had misinterpreted the philosophy of the Revolution. Resistance for them did not mean the preservation of the constitution (as it was in 1688) but resistance

(1) Journal of a tour and residence in Great Britain, [By Louis Simond] (2 vols. Edin., 1815) i, p. 81.

against a parliamentary system of government which, according to them, oppressed them both economically and politically. But although the doctrine of resistance of the Revolution period lost its significance with changing conditions, the political philosophy, which the Whigs had evolved to justify it, remained to form the basis of the modern theories of the state.

APPENDIX I
ADDITIONAL NOTES



1. This very comprehensive theory of divine right is in strong contrast to the monopolising theory of divine right of kings in Stewart England. But we should note that in Tudor England the theory of divine right of the king was by no means lost sight of. In a sermon on Psalm 82, v.6-7, Henry Smith reminds us that kings are called gods in the Bible. "Thus their name telleth them how they should rule and by consequence how we should obey. God calls them gods, therefore he which contemneth them, contemneth God; God calls them father, therefore we must reverence them like fathers; God calls them kings, princes, lords, judges, powers, rulers, governors, which are names of honour, and shall we dishonour them whom God doth honour?... They to whom God saith, I have called ye Gods, as if he had the naming and appointing of them. 'Every power is from God,' Rom. xiii, 2, for by nature no man can challenge power over another, but by the word: and therefore every soul which is subject to God, must be subject to them, 1 Pet., ii, 13, for he which calls them kings, calls us subjects; this is their patent...that God had chosen them kings, and set them upon the throne." - The magistrates Scripture in Works, vol. 1, pp.363-4. (Nichol's Ser. of Stand. Divines. Puritan Period.)
2. The justification of the assistance given by England to the Netherlands against Spain was a thorny problem. It was justified specifically by the Vindiciae contra tyrannos (1579). The assistance rendered by Elizabeth was repeatedly cited after 1638 as a practical demonstration of the acceptance of the doctrine of resistance in Tudor England.

There were, in Tudor England, men of eminence who did not hold with the current political conceptions. John Poynt, Bishop of Winchester, in his Short treatise of political power (1556) held that the king derived his authority from the people and that the people may withdraw the authority they have delegated if it should be abused. He wrote : "The manifold and continuall examples that have been from time to time, of the deposing of kings, and killing of tyrants, do most certainly confirme it to be most true, just, and consonant to Gods judgement...As God hath ordained magistrates to heare and determine private mens matters, & to punish their vices : so also will he that the magistrates doings be called to account and reckoning, and their vices corrected and punished by the body of the whole congregation or commonwealth." - 1639 edition, p.47 and p.49.

3. Bodin wrote : "And in that the greatness and majesty of a true sovereign prince, is to be known ; when the estates of all the people assembled together, in all humility present their requests and supplications to the prince, without having power in anything to command or determine, and to give voice but that which it pleaseth the king to like or dislike of, to command or forbid, is holden for law, for an edict and ordinance. Wherein they which have written of the duty of magistrates and other such like books, have deceived themselves, in maintaining that the power of the people is greater than the prince; a thing which otherwise causeth the true subjects to revolt from the obedience which they owe unto their sovereign prince and ministreth matter of great troubles in commonwealths." - De Republica, Bk.I, chap.viii. (Eng. tr., 1606, p.95.)

4. "Everybody's consent is involved in the making of every English law: and then it is no more than common honesty to stand to one's own act and deed." - Johnson, Notes on the phoenix edition of the Pastoral letter (1694) in Works (1710), p.302.

"The supreme power in a state can do no wrong because whatever that does, is the action of all." - Swift, Sentiments of a Church of England man (1708) in Works, iii, p.70.

"Their acts are the acts of the whole nation: so if the people complain, they complain of their own acts." - A letter to a friend occasion'd by the contest between the Bishop of Exeter and Mr Hoadly (1709), p.3.

5. Manwaring, as we have said, was held in considerable repute (or disrepute, according to the critic's bias) in the Revolution period. Cf. The proceedings of the Lords and Commons in the year 1628 against Roger Manwaring D.D. the Sacheverell of his day for two seditious high-flying sermons, printed in London in 1709. The sermons themselves were reprinted in that year also.

On the other hand, Knight of Pembroke College, Oxford, was imprisoned in 1622 for asserting that it was lawful for subjects, in defence of themselves when persecuted for religion, to take arms against their prince. The Convocation of the University of Oxford in the same year condemned the proposition 'That subjects, not private persons, but inferiour magistrates, may take arms to defend themselves, the commonwealth, the Church, and true religion, against their sovereign, and the superior magistrate.' The University decreed "That according to the canon of the Holy Scriptures

subjects ought by no means forcibly to resist their prince; and that it is not lawful to take arms either offensive or defensive against the king upon the account of religion, or any other pretence." David Owen in his Anti-Paraeus published at Cambridge in 1622 endeavoured to disprove the doctrine of resistance. (Cited by the History of passive obedience, 1689, pp. 14-16.) It is significant that the doctrine of resistance was attracting attention in England before the Rebellion.

6. The Puritan divines preached of the divine right of magistracy and of non-resistance to the Cromwellian regime. But these men had resisted the king and violated the royalist doctrine of non-resistance. On their side, the royalists waited for the opportunity to resist Cromwell in defence of their doctrine of non-resistance. But until a Stewart was restored to the throne, it was not in their interests that the doctrine should be propagated.

It is a striking fact that the political thought of the Commonwealth received no recognition at the Revolution. The deposition and beheading of Charles was universally classed as murder. Cromwell was detested. There were, it is true, books published after 1689 justifying the execution of Charles. Nottingham in 1702 moved in the House of Lords that an enquiry should be made into them. Referring to these books, Burnet says: "The provocation of some of these, was, by a sermon preached by Dr Binks before the Convocation, on the thirtieth of January, in which he drew a parallel between King Charles's sufferings and those of our Saviour: and, in some very indecent expressions, gave the preference to the former."- Hist., v, p.16.

We do not mean that the ideas of the Whigs after 1689 are not to be found in the

Commonwealth period, but we mean that the Whigs would not admit any debt to that period. A Whig writer, for example, in citing Milton's Tenure of kings and magistrates because of an apt quotation, hastens to add : "It is not here intended to justify that pamphlet." - Tories and Tory principles ruinous to both prince and people. (1714) p.66.

7. We should marvel, said one author, "that God should all of a sudden inspire the nation to rise up in opposition to him [i.e. James II] though the doctrine of passive obedience had been inculcated upon them as a point to be believed on pain of damnation for thirty years before." - A defence of the Archbishop's sermon on the death of her late majesty (1695). S.T.Wm. III, ii, p.534.

Burnet wrote : "It is no wonder, if after such a war [the Rebellion, which Burnet held to be unjustifiable] the doctrine of non-resistance was preach'd and press'd with more than ordinary warmth, and without any exceptions." - Speech in the House of Lords against Sacheverell, S.T., xv, 490.

Swift, when his sympathies were mainly with the Whigs, said that if we remembered that England had just passed through twenty years of rebellion, some allowance might be made for the extreme form of the doctrine of non-resistance. - The sentiments of a Church of England man (1708) in Works, iii, p.67. When writing as a Tory he said : "Suppose two or three private divines, under King Charles the Second, did a little overstrain the doctrine of passive obedience to princes; some allowance might be given to the memory of that unnatural rebellion against his father, and the dismal consequences of resistance." - Examiner, No. 40, May 3, 1711 in Works, ix, p.306.

8. Cf. Burnet, Subjection for conscience sake asserted. (1674, publ. 1675) This sermon was recalled in 1710 when Burnet upheld the doctrine of resistance at the Sacheverell Trial. One writer pointed out Burnet's change of opinion and called on him to state whether he would stand by the sermon of 1674 or the speech of 1710. See Some considerations humbly offered to...the Ld Bishop of Salisbury (1710) Burnet in his Vindication of the authority...of the Church and State of Scotland (1673) said of the king : "He is only accountable to God, whose minister he is. And this must hold good except you give us good grounds to believe, that God hath given authority to the subjects to call him to account for his trust, but if that be not made appear, then he must be left to God, who did impower him, and therefore can only coerce him." p. 14. This passage was cited by the author of Torics and Tory principles ruinous to both prince and people. (1714) p.53.

Burnet, in his speech at the Sacheverell Trial, referred to the pre-Revolution doctrine of non-resistance which was enunciated by some with exceptions and to justify himself added : "Some still kept these in view; so did both Dr Falkner and myself." - S.T., xv, 490. Swift wrote of Burnet : "That eary love of liberty he boasts is absolutely false : for the first book that I believe he ever published is an entire treatise in favour of passive obedience and absolute power ; so that his reflections on the clergy, for asserting and then changing those principles, come very improperly from him." See 'Short remarks on Bishop Burnet's History' in Works, x, p.328.

Hutton cites the Epitaph on passive obedience from a MS. in the Rawlinson

papers, wherein the versifier says that the doctrine

"Was not long since in great favour

As any doctrine of our Saviour

With Burnet, Stillingfleet and Patrick."

Hutton, The English Church from the accession of Charles I to the death of Anne, p.237.

9. Tillotson, in his letter to Lord Russell, June 20, 1683, said : "That the Christian religion doth plainly forbid the resistance of authority...That though our religion be established by law...yet, in the same law, which establishes our religion, it is declar'd 'That it is not lawful upon any pretence whatsoever to take up arms.'" Cited by Phipps in defence of Sacheverell. S.T., xv, 231. Also cited by Tories and Tory principles ruinous to both prince and people. (1714) p.51.

We are told, however, that "even Dr Tillotson himself, tho' he had writt that letter to the Lord Russell, which had been often quoted as unanswerable, yet would not generally affirm, tho' asked before the king in person, that no case was to excepted. And his majesty was so far from being offended at his caution, that he declared to his brother, 'That the dean spoke like an honest man' and woul'd not have press'd any further." - Echard, History of the Revolution, p.22.

Tillotson's letter is printed in full in A letter formerly sent to Dr Tillotson, and for want of an answer made publick and now reprinted, with the said Doctor's letter to the Lord Russel, a little before his execution. By Charlwood Lawton. - Som. T., ix, at p.371.

10. The author of The history of passive obedience (1689) referring to the sixth commandment of the Necessary doctrine and erudition of any Christian man (1543. A new edition was

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published in 1932.) - 'No subjects may draw their swords against their prince for any cause whatsoever it be' -, remarks: "So that hereby we see, that the declaration made in the reign of Charles the Second (That it is not lawful upon any pretence, etc.) is no novel doctrine of the Church of England, but the old doctrine of the Church of England even in the infancy of its reformation." pp. 19-20. The Necessary doctrine was cited by the defence in the Sacheverell Trial. S.T., xv, 244-245.

11. Ferguson said the right of parliament to dispose of the crown had never been doubted "till a few mercenary people about ten years ago [i.e. at the time of the Exclusion Bill] endeavoured to intrude upon us a pretended divine and unalterable right to the succession." - A brief justification, etc. (1688) S.T.Wm.III, i, p.142.

"There was nothing at that time to be heard, in the most of our churches, but the divine right of succession." - A modest inquiry into the causes of the present disasters in England, etc. S.T.Wm.III, ii, p.96.

12. The Decrees, drawn up by Dr Jane, Dean of Gloucester and Professor of Divinity at Oxford, originally appeared in the London Gazette of July 24, 1683. The first five propositions to be condemned are the most important for they formed the basis of Whig political theory after the Revolution. The Whigs could have no objection to the condemnation of some of the other decrees. The Decrees were cited by the defence at the Sacheverell Trial (S.T., xv, 255-260) and, along with Sacheverell's sermons, were burned by order of the House of Commons at the conclusion of the trial.

They were reprinted in 1710 under the title An entire confutation of Mr Hoadly's book of the original of government, taken from the London Gazette. At the end is a note : "Advertisement. This is to give notice that if Mr Hoadly will not recant his rebellious and seditious principles which he has borrow'd from the vile authors here condemn'd, he may speedily expect the same censure from the universities which they underwent."

It would appear that Swift, though he upheld the doctrine of non-resistance, disowned these decrees. See his Examiner, No. 40, May 3, 1711 in Works, ix, p.258.

The Decrees are also published in full in Cooke, History of party (1836), i, pp. 348-355.

13. Dr Figgis shows that the divine right theorists were pleading primarily for sovereignty in general as an essential attribute of any state. (Divine right of kings, chap. ix.) This is certainly true. But Hickes, for example, after laying down the rules of sovereignty which must apply, he says, to democracies as well as monarchies, concludes : "In all perfect governments, and particularly in the English, all these rights legally belong to the sovereign, who is the king, especially to be accountable to none but God." etc. - Jovian; or an answer to Julian the Apostate (1683). p.203.
14. "Government in general...derives its ordination and institution from God...All rulers are thus far under pact and confinement, that they are obliged by the Almighty and Supreme Sovereign, to exert their governing power for the promoting His service and honour,

and to exercise their authority for the safety, welfare, and prosperity of those over whom they are established." - Ferguson, A brief justification, etc. (1688) S.T.Wm.III, i, p.135.

15. Government, said Hoadly, "is the ordinance of God...in this sense, because it is agreeable to his will, that so good and useful an office should be kept up in humane society." - Some considerations, etc. (1709) in Works, ii, p.127.
16. "All political power is from God...But then we must consider, that these powers are not immediately from God, but immediately from second causes. When we say God made us, we don't mean immediately created us as he did Adam : so when we say all governing powers are from God, we don't mean immediately by God's creation...If therefore we will enquire into the origin of this or that government, we must look for the immediate second causes : which can be but two, either force or consent, or partly one, partly t'other." - A letter to a friend occasion'd by the contest, etc. pp.3-4.
17. "Thus may government (abstractedly considered, they [the Whigs] say) be said to be of divine right ; but the particular modes or species of government are left wholly to mankind." - The criterion, or touchstone, etc. (1710) pp.5-6.
18. "I will not deny that if we look back, as far as history will direct us, towards the original of commonwealths, we shall generally find them under the government and administration of one man. And I am also

apt to believe that where a family was numerous enough to subsist by itself, and continued entire together, without mixing with others, as it often happens, where there is much land and few people, the government commonly began in the father. For the father having, by the law of nature, the same power, with every man else, to punish, as he thought fit, any offences against that law, might thereby punish his transgressing children, even when they were men, and out of their pupilage ; and they were very likely to submit to his punishment, and all join with him against the offender in their turns, giving him thereby power to execute his sentence against any transgression, and so, in effect, make him the law-maker and governor over all that remained in conjunction with his family... Thus, though looking back as far as records give us any account of peopling the world, and the history of nations, we commonly find the government to be in one hand, yet it destroys not that which I affirm - viz., that the beginning of politic society depends upon the consent of the individuals to join into and make one society, who, when they are thus incorporated, might set up what form of government they thought fit." - Locke, Second Treatise, §§105-106.

19. "In transgressing the law of nature, the offender...becomes dangerous to mankind ; the tie which is to secure them from injury and violence being slighted and broken by him, which being a trespass against the whole species, and the peace and safety of it, provided for by the law of nature, every man upon this score, by the right he hath to preserve mankind in general, may restrain, or where it is necessary, destroy things noxious to them, and so may bring such evil on any one who hath transgressed that law,

as they may make him repent the doing of it, and thereby deter him, and, by his example, others from doing the like mischief." - Locke, Second Treatise, §8.

"Supposing no fixed government...he would be a public benefactor, who should kill a public enemy." - Hoadly, Some considerations, etc. (1709) in Works, ii, p.130.

20. Pufendorf said : "To object the vulgar maxim of Quod quis non habet, non potest in alterum transferre...is but a piece of trifling ignorance." - Of the law of nature and nations. (1672) Kennett's translation of 1703, Bk. vii, chap. iii, p.160.

His answer to the objection is : "But now it may and often does happen, that a moral quality (in which class government ought to be reckoned) shall be produced in another person by the concurrence of those who had it not, truly and properly, in themselves before : so that they may be rightly deem'd the productive cause of the said quality. As many voices, joining in concert, produce a harmony, which no single person himself could pretend to by himself... 'Tis easily seen, that some scatter'd seeds (as it were) of government lie hid in particular persons ; which, by means of concurrent compacts, being excited into motion, do grow and shoot forth." - Ibid., p. 162.

21. The theory of original popular power was not always required by contract theorists. Cf. "It is objected against this opinion of electing our governors, that the people having no power over their own lives, cannot give that power to any other...It is not the people that confer this power, but God." - A resolution of certain queries concerning submission to the government. S.T.Wm.III, i, p.443.

22. "It is a contradiction to deny that all civil power is originally in the people : for what is civil power in English, but the city's power, and derived from the community ? And this either limited, or enlarged, as they please. The intention of the people (as Fortescue tells us) is the heart-blood of the government, and is the *primum vividum* in the body politick, as the heart is in the body natural. And it is impossible to be otherwise : the nation must make the king, for I am sure the king cannot make the nation. And as Sir William Temple very well observes, the basis of government is the people, though the king be at the top of it ; and to found the government upon a king, is to invert the pyramid, and set it upon the pinnacle, where it will never stand." - An argument proving, etc. (1692) in Works, p.276.

23. "But since self-love and self-interest are oft-times prejudices too strong for that just and equal return of kindnesses, which is required in all human societies : men therefore lay down and submit to external forms and rules, which they judg to be most convenient measures of their obligations to each other." - Wynne, The case of the oaths stated. (1689) S.T.Wm.III, i, p.340.

"I easily grant that civil government is the proper remedy for the inconveniences of the state of nature, which must certainly be great, where men may be judges in their own case." - Locke, Second Treatise, §13.

"But finding this [the state of nature] a state of no regular security, they resolve to transfer this right of self-defence to some particular persons, reserving to themselves the exercise of self-defence in those

cases in which the magistrate cannot act for their safety." - Hoadly, Some considerations, etc. (1709) in Works, ii, p.135.

"That the inconveniences of society without government are so many that it quickly brings them to enter into such pacts as they think will best serve the end of all political society." - The criterion, or touchstone, etc. (1710) pp.5-6.

24. Tindal again followed Locke here without acknowledgment. He wrote : "If then men are naturally free, with no power over one another except what's reciprocal, they cannot lose their equality without their own consent, in forming themselves into bodys politick : which cou'd no otherwise be done, than by agreeing to be determin'd by a majority ; because a society can have only one mind, that of the greater number, who having the greater force, must make the body politick move as they please." - The rights of the Christian Church. 4th. ed., p.6.

Cf. also the following two passages written before the publication of Locke's Treatises:-

"The constitution of a government does lie in the original agreement of the people, which they make between themselves, or with their intended governor or governors, before the government be set up, whether there be none before, or the former at an end." - Good advice before it be too late. (1688) Som.T., x, pp.198-199.

"All politick societies began from a voluntary union and mutual agreement of men, freely acting in the choice of their governors, and forms of government. All kings receive their royal dignity from the community, by whom they are made the superiors minister and ruler of the people." - Political aphorisms. S.T.Wm.III, i, p.389.

25. In the case of Spinoza, this is not surprising. His philosophy made slow progress in England. His Tractatus theologico-politicus, however, was published in London in 1689. But there was no English edition of his Tractatus politicus until last century. Spinoza's religious views were attacked in Spinoza reviv'd, etc. (London, 1709.)
26. "If the government be dissolved, the power devolves on the people;...the people may set up what government they please, either the old or a new; a monarchy absolute or limited, or an aristocracy or democracy." - A letter to a friend, etc. Som..T., x, p.195.
27. This author asked : "If the regal power be fallen...whether of necessity it must not fall to its center or root from whence it sprung, which is the whole nation." - A word to the wise, etc. S.T.WM.III, i, p.227.
28. If the government is dissolved "it devolves to the people, who have a right to resume their original liberty, and by the establishment of a new legislative (such as they shall think fit), provide for their own safety." - Locke, Second Treatise, §222.
29. Swift admitted that if the throne was vacant in 1688, then "the body of the people was thereupon left at liberty to choose what form of government they pleased, by themselves, or their representatives." - Sentiments, etc. in Works, iii, p.71.

30. "There are it seems two different opinions about the origin of government; not the primary origin, but the origin of this or that place. Some affirm it in the people : and those of that opinion, I know not why, infer, that upon a male-administration, the people may by force change their trustees." - A letter to a friend occasion'd by the contest, etc. (1709) pp.1-2.
31. "'Tis agreed that in all government there is an absolute unlimited power, which naturally and originally seems to be placed in the whole body, wherever the executive part of it lies. This holds in the body natural. For wherever we place the beginning of motion, whether from the head, or the heart, or the animal spirits in general, the body moves and acts by the consent of all its parts. This unlimited power placed fundamentally in the body of the people, is what the legislators of all ages have endeavoured in their several schemes or institutions of government to deposit in such hands as would preserve the people from rapine and oppression within. Most of them seem to agree in this, that it was a trust too great to be committed to any one man or assembly, and therefore they left the right still in the whole body, but the administration or executive in the hands of one, the few or the many." - Swift, A discourse of the contests and dissensions, etc. (1701) pp.3-4.
32. Defoe, who was one of the most democratic writers of the age, in explaining that the people have a right of resistance, adds : "Note, I do not place this right upon the inhabitants, but upon the freeholders : the freeholders are proper owners of the

country." (Original power of the people in Works (1703), p.157.) Those who are not freeholders, are "but sojourners, like lodgers in a house, and ought to be subject to such laws as the freeholders impose upon them, or else they must remove : because the freeholders having a right to the land, the others have no right to live there but upon sufference." (Ibid., p.160.) This argument Defoe to the astonishing conclusion that if the king should come to be sole landowner, he would be an absolute monarch, against whom there could be no appeal.

Even with limited definition of 'people', Defoe went much further towards democracy than Locke. While for Locke and other writers, popular sovereignty was a dormant right, for Defoe it ought constantly to be asserting itself. He saw clearly that a reserved right of revolution, though admirably suited for a crisis, did not meet adequately the everyday needs of practical politics. He made representation a cardinal point of his political philosophy. In Legions Memorial he thus addressed the House of Commons : "You are not above the peoples' resentments, they that made you members, may reduce you to the same rank from whence they chose you." (p.1) The same thought runs through the Original power of the collective body of the people. His popular sovereignty was the fountain of legal sovereignty. There is a constant flow of power from the people to the government. Popular sovereignty is the dynamic, which not only gives life and force to government, but which constantly sustains it. But Defoe was in advance of his age, and it cannot be said that these views represented Whig thought.

33. That individuals did not have the right to resist is implied when a writer says that

the History of passive obedience is beside the point, because that work only demonstrated "the unlawfulness of private persons their rising up in arms against the government." See A modest inquiry into the causes of the present disasters in England. (1690) S.T.Wm.III, ii, p.98.

George Ridpath said that if Sacheverell, when he condemned "appeals to the people as the only judges of right and wrong...as rebellious", meant every individual, then Ridpath agreed with him. "But we say that people have a right as courts of judicature established by law." Yet he was a hearty defender of the doctrine of resistance. See his The perils of being zealously affected but not well. (1709)

Wake made the same implication. "Perhaps a prince who affects an arbitrary sway : and his ministers joyn in the same designs with him ; and nothing less than the authority of a parliament can put a stop to their attempts. This, therefore may make it necessary, in times of peace and quietness, for the parliament to meet at certain times, to prevent such attempts, and to keep every member of the constitution within its due bounds. And such was the case of the last reign." - The authority of Christian princes over their ecclesiastical synods, etc. (1697) p.278.

Lechmere, at the Sacheverell Trial, said that "that part of the government, thus fundamentally injur'd had a right to save or recover that constitution in which it had an original interest." S.T., xv, 61.

Cf. also chap. 6.

34. "When that remedy [the Revolution] took place, the whole frame of the government was restored entire and unhurt. This showed the excellent temper of the nation was in at that time, that after such provocations from an abuse of the regal powers, and such

convulsions, no one part of the constitution was altered, or suffered the least damage, but on the contrary, the whole received new life and vigour." S.T., xv, 98. He repeated this on the ninth day of the trial in his reply. Ibid., 387.

35. Blackstone declined to say when the right of resistance should come into force. His conclusion, drawn from the Revolution, was as follows :

"And so far as this precedent leads, and no farther, we may now be allowed to lay down the law of redress against public oppression. If therefore any future prince should endeavour to subvert the constitution by breaking the original contract between king and people, should violate the fundamental laws, and should withdraw himself out of the kingdom ; we are now authorised to declare that this conjunction of circumstances would amount to an abdication, and the throne would be thereby vacant. But it is not for us to say, that any one, or two, of these ingredients would amount to such a situation ; for there our precedent would fail us. In these therefore or other circumstances, which a fertile imagination may furnish, since both law and history are silent, it becomes us to be silent too ; leaving to future generations, whenever necessity and the safety of the whole shall require it, the exertion of these inherent (though latent) powers of society which no climate, no time, no constitution, no contract, can ever destroy or diminish." - Commentaries, Bk.i, chap.7. (9th. ed., 1783, p.245.)

36. "A people will not pretend a necessity for resistance if there is no real one. If the oppression is not genuine the body of the people will not be affected: consequently

there will be no inducement to rise in arms. There will be no rising without probability of success for men know that if it fail they will be put to death as traitors tho never so unjustly." - Chuse which you please, etc., p.5.

It is noteworthy that William Paley a hundred years later, basing his philosophy on the Revolution, used this argument of justification by success. - The principles of moral and political philosophy. (1785) Bk. vi, chap. 3.

37. "When then this [i.e. the Great Seal] disappears, and the king withdraws himself, without naming any persons to represent him, the government is certainly laid down and forsaken by him." - Burnet, An enquiry into the present state of affairs, etc. (Dec., 1688) S.T.Wm.III, i, p.129.

"It was the design of the popish party to persuade him to withdraw himself, their end in it being to put us thereby into confusion. This they did not boggle to speak out; the Lord Dover and Mr Brent made no secret of it." - A letter to a bishop concerning the present settlement, and the new oaths. (1689) Som.T., ix, p. 378.

Locke hinted at James's desertion when he wrote : "There is one way more whereby such a government may be dissolved, and that is : when he who has the supreme executive power neglects and abandons that charge, so that the laws already made can no longer be put in execution ; this is demonstrably to reduce all to anarchy, and so effectually to dissolve the government." - Second Treatise, §219.

38. The Tories were afterwards accused of ulterior motives in wanting a regency. Of the Tories, and of the Bishop of Ely in particular, a pamphleteer said : "The pious prelate could have been well contented that the Prince of Orange had then retir'd into Holland, and left the administration of public affairs and the disposing of the revenue of the crown to him, and other worthy Tories. In which case all had been according to the law and conscience, the king retaining the name, and the right reverend having the power." - See Tories and Tory principles ruinous to both prince and people. (1714) pp.76-77.

Of the regency plan, Swift said :
"It was certainly much the best expediency."
- Note on Burnet's History, in Swift's Works, x, p.364.

39. The words abdication and desertion were both ambiguous. Their ambiguity served a useful purpose when men were unwilling to speak bluntly. Several interpretations were put on the word abdication. One pamphleteer, who did not admit that James had been resisted, wrote : "I suppose it is not pretended in England his late majesty forfeited his right to govern by his misgovernment; but that the sense of it prevail'd upon him rather to throw up the government, than to concur with an English free-parliament in all that was needful to re-establish our laws, liberties and religion : and this is a proper legal abdication, as it is distinguished from a voluntary resignation on the one hand, and a violent deposition on the other." (The history of the desertion. S.T.Wm.III, i, p.38.) At the Sacheverell Trial, Jekyll took the same view as the committee of the lower house. He said that the word abdicate was insisted on because it included in it

the maladministration of James, which the word desertion did not. (S.T., xv, 101.) Ferguson used the verb 'to abdicate' in its transitive form. He spoke of the people's right "to abdicate the king." (A brief justification, etc. S.T.Wm.III, i, p.140.)

Roughly speaking, the word desertion was a Tory word ; abdication a Whig. Whatever reason the Commons might give for choosing abdication, it is clear it was chosen as being more in keeping with the conclusion that the throne was vacant. The Tories in Anne's reign who clung to the abdication theory did so to prove that the throne had been vacant, but not that James had abdicated, that is, that he had been resisted.

Locke did not refer either to abdication or to desertion, but he certainly would have preferred the latter expression. Government, he said, is dissolved when the "executive power neglects and abandons that charge." (See above, Note 37.) The conclusion, therefore, that 'the throne was vacant' would have followed from the Tory word 'desertion' according to Locke's interpretation of it.

40. Clarges said : "By this vacancy I understand only that the king has abdicated for himself and divested himself of the right of government and that the government comes to the Protestant heir in succession." - Grey's Debates, ix, pp.55,58.

A pamphleteer believed that when James abdicated there was a vacancy but no interregnum. The Convention in their resolution only indicated that the throne was vacant as a consequence of the abdication, and was vacant only so far as James was concerned. From the time of the abdication, the next heir was king. The kingship was not in abeyance, but "as the lawyers say" in abatement. - Agreement betwixt the present and the former government, S.T.Wm.III, i, p.422.

41. Sir James Mackintosh wrote : "the fact was shortly, that the Prince of Orange was elected king of England, in contempt of the claims, not only of the exiled monarch, and his son, but of the princesses Mary and Anne...The title of William was then clearly not succession... The deviation was indeed slight, but it destroyed the principle and established the right to deviate, the point at issue. The principle that justified the elevation of William III and the preference of the posterity of Sophia of Hanover to those of Henrietta of Orleans, would, in point of right, have vindicated the election of Chancellor Jeffries or Colonel Kirk. The choice, like every other choice, to be guided by views of policy and prudence, but it was a choice still." - Vindiciæ Gallicæ. 3rd. ed., pp.301-302.

The Vindiciæ was a reply to Burke who had pleaded for hereditary monarchy and cited the Revolution in his favour even though he had to admit that there was "at the Revolution, in the person of king William, a small and temporary deviation from the strict order of a regular hereditary succession." - Reflections on the revolution in France, in Works, ii, p.291.

42. William Paley took this view. The oath of allegiance, he said, "permits resistance to the king, when his imbecility or ill behaviour is such, as to make resistance beneficial to the community. It may fairly be presumed that the Convention Parliament, which introduced the oath in its present form, did not intend, by imposing it, to exclude all resistance, since the members of that legislature had many of them recently taken up arms against James the Second, and the very authority by which they sat together was

itself the effect of a successful opposition to an acknowledged sovereign. Some resistance, therefore, was meant to be allowed ; and, if any, it must be that which has the public interest for its object." - The principles of moral and political philosophy (1785) in Works (1831), i, p.151.

43. In the numerous pamphlets upholding the right of resistance, the verb 'to resist' is seldom used as synonymous with 'to depose'. Deposition inferred a formal sentence against a lawful king. Resistance, on the other hand, could take place only after the king had ceased to be a king by his own unlawful acts and thus absolved his subjects from their allegiance. There were some writers, however, who continued to speak of James's deposition even after the period mentioned in the text. Johnson in An argument proving, etc. (1692), Toland, who said : "We deposed a prince" in his Memorial of the State of England (1705), p.13, and Thomas Bradbury who asserted : "People have a right to dethrone a tyrant" in his The lawfulness of resisting tyrants (1714), p.2 are examples. But it is significant that the author of Parliamentary right maintained (1714), after he spoke of the deposition of "James for his tyranny, more majorum" added : "Yet it must be confessed, to be the more accurate and true way of speaking, to say our parliaments never pretended to depose kings till they had first deposed themselves by subverting our laws." p.40.

44. Cf. "If your Lordship should ask me when this dissolution of government happened, I think I should be able to fix the time ; your Lordship does remember, that upon the

Duke of Monmouth's rebellion, the late king gave commissions to several popish officers ; this was the forerunner of it. But, when upon the sitting down of the parliament in October afterwards, he not only in his speech told his parliament that he had done it, but that he was resolved to stand by it, and thereupon dismissed his parliament for their opposition to it, he finished his design, and our ruin ; and from that moment I look upon the English constitution to be altered, and must lay my finger upon this as the compleat subversion of our legal government." - A letter to a bishop concerning the present government, and the new oaths. Son. T., ix, p.375.

45. "But alas ! poor king James soon lost the kindness of these his former votaries. For he who had been told every day, he might do what he pleas'd, and was accountable to none but God, thought he might safely venture to make trial of the passive obedience of men that told him so. Here he was mightily mistaken, and hence he may date all his misfortunes." - A modest inquiry into the causes of the present disasters in England, etc. S.T.Wm.III, ii, p.96.

"But...when the burden of their own ill-contrived oppression came home to themselves, and touch'd but one of their fingers, they soon let him understand that they had given him only a spiritual kingdom, and not a kingdom of this world." - Johnson, An argument proving, etc. (1692) in Works, p.261.

"But when the prince, taking them at their word, ventures to lay the burden on their backs, they rise up and kick him in the face." - Defoe, Jure divino. (1706) p.ii.

"There's no such creature in Great Britain as a passive obedience man ; they have all resisted when touched." - High Church address. (1710) p.16.

46. Kettlewell, the non-juror, however, re-iterated the doctrine in his Christianity, a doctrine of the Cross. (1691) And Ashton on the scaffold died professing it. See An answer to the paper delivered by Mr Ashton at his execution... Together with the paper itself. (1690) S.T.Wm.III, ii, pp.104-115. Both Fowler and Stillingfleet have been suggested as the author of this pamphlet, but it was probably Fowler. The author said that Ashton did not suffer for the doctrine of non-resistance but for the want of it. Ibid., p.106. Johnson called him "poor Ashton", "because I heartily pitied his death : for he acted in pursuance of those principles which his answerer, to my knowledge has publicly preach'd above these twenty years."

The doctrine of non-resistance had been frequently called the 'doctrine of the Cross', for example, in Charles II's reign. See Echard, History of the Revolution (1725), p.21. Johnson said : "To Christen their bowstring obedience, and to call it the doctrine of the Cross, thereby abusing the adorable mystery of our salvation, and turning it into a state-engine of tyranny and slavery." - Notes on the phoenix edition, etc. (1694) in Works, p.302.

47. "Passive obedience must be crook'd and bent like a ninepence and look contrary ways, before he [Sherlock] can make a token of it to this government ; for actual resistance of tyranny gave this

government its birth and being, and it stands and can stand on no other bottom." - Johnson, Notes on the phoenix edition, etc. in Works, p.308.

A writer in 1710 said : "Julian Johnson was the first builder upon this bottom [resistance] but was never rewarded for his labour." - A true defence of H.Sacheverell D.D. in a letter to Mr Diolbein, p.5.

48. Hoadly's sermon contained a very slight notice of the doctrine of resistance. The gist of it can be given in a few words. All power, he said, was from God, but no particular form of government was divine. St Paul says submission is due to a ruler who rules for the good of the people. A ruler who does not rule for the public good cannot claim obedience and subjects may resist.

Hoadly replied to his critics in The measures of obedience to the civil magistrate considered in defence of the doctrine delivered in a sermon, etc. in Works, ii, pp.3-102.

In the House of Lords, Bishop Compton said that "sermons are now preached wherein rebellion was countenanced, and resistance to the higher powers encouraged." On this occasion, Burnet answered Compton and upheld the doctrine of resistance. - Parl. Hist., vi, 485-492.

Compton's attitude to the doctrine is noteworthy. He was one of those who invited over the Prince of Orange. But here he is found opposing Burnet and Hoadly, and he voted Sacheverell not guilty at his trial.

49. A Tory pamphleteer, referring to this dispute, wrote : "The next business of the

Whigs was to make choice of a proper subject to work upon : This they thought they had found in a sermon preach'd by a Right Reverend, before the queen ; upon this sermon, their teaser Hoadly had begun the chase in a letter to his lordship." - The fourth and last part of a caveat against the Whiggs. 2nd. ed. (1710), p.119.

Hoadly's part in his controversy with Blackall was derided in Advice from the Shades-Below : or, a letter from Thos Hobbs of Malmesbury to his brother B--n H--dly. (1710)

50. Swift, no doubt, had this speech in mind when he satirically made the Whigs say : "Because nothing so much distracts the thoughts as too great variety of subjects, therefore they had kindly prepared a bill to prescribe the clergy what subjects they should preach upon, and in what manner, that they might be at no loss." - The Examiner, No. 22, Jan. 4, 1710/11. And again : If the Whigs came into power again, they would bring in a bill "to forbid the clergy preaching certain duties in religion, especially obedience to princes." - The Examiner, No. 26, Jan. 25, 1710/11. (Works, ix, p.161.)

In the queen's speech at the close of the session in which the trial had taken place, Anne said : "I could heartily wish that men would study to be quiet, and do their own business, rather than busy themselves in reviving questions and disputes of a very high nature...since they can only tend to foment...divisions and animosities." - Parl. Hist., vi, 898.

The clergy were blamed for bringing the troubles of 1688 upon the country through their preaching of non-resistance. Clergymen, said one writer, are no politicians, and ought not to meddle with politics. God never intended them for it. "What a hotch-

potch have they made with their kings de facto, their jure divino, their passivity, and non-resistance ? But these are beaten topics." - Plain English, or an inquiry into the causes, etc. S.T.Wm.III, ii, p.184.

It must be pointed out in fairness to the Tories that Hoadly used the pulpit to preach politics ; and, considering their position, the clergy were less to be censured for preaching non-resistance than resistance.

Defoe recommended the clergy to leave politics to ministers of state. No one, he said, thought the church was in danger till a Hoadly told them they ought to defend it, or a bigoted Sacheverell puzzled his head with the power of the prince. "But our modern priests have laid aside divinity and are all turning politicians." - High-Church address to Dr Henry Sacheverell. (1710) p.9.

Why should Sacheverell be blamed for preaching politics, asked a pamphleteer, when the House of Commons commended Hoadly for it ? - A true defence of Henry Sacheverell, etc. (1710) p.5.

When Steele attacked the clergy for the same cause (see his The crisis, 1714) Swift replied that Hoadly, a champion of the doctrine "was never charged for meddling out of his function." - The public spirit of the Whigs, etc. (1714) in Works, v, p.326.

51. John Mather, preaching before the University of Oxford on May 29, 1705, had said practically the same thing. He attacked "those receptacles of wickedness, the schismatical illegal seminaries, wherein the seeds of sedition are carefully sown." (p.22) He attacked comprehension whereby "the true sons of the church are passion-

ately exhorted to receive and treat the revoltors with all imaginable respect and tenderness, as their trusty fellow-citizens." (p.23) - A sermon preached before the University of Oxford. The same attitude was taken by the Memorial of the Church of England (1705) and refuted by Toland in The memorial of the State of England and by other pamphleteers.

52. The Solicitor-General (Sir Robert Eyre) said : "When the question is not, whether the Revolution was brought about by conquest, or what would be the consequence of such an assertion, either in regard to the honour of the king, or the condition of the people, there can be no colour for saying that he meant by this general expression, which carries no such meaning in itself, that the king disclaim'd conquest, or a resistance which tended to conquest only.

"Especially, my Lords, when the subject matter of his discourse naturally led him to assert this proposition in the common and ordinary sense which the words import : for he is asserting the doctrine of absolute non-resistance, and shewing that the lawfulness of the Revolution was no argument against it : and why ?" Because the king disclaim'd the least imputation of resistance, there was no such wicked ingredient as resistance in it ; no other answer would have serv'd him, and therefore it can never be supposed that he meant to clear the king from any design of conquest, or intended to say anything in vindication of his majesty upon that head." - S.T., xv, 105-106.

53. Lechmere, for the prosecution, said :

"My Lords, the necessary means (which is the phrase us'd by the Commons in the first article) are words made choice of

by them with the greatest caution...The Commons, who will never be unmindful of the allegiance of the subjects to the crown of this realm, judg'd it highly incumbent upon them, out of regard to the safety of her majesty's person and government, and the ancient legal constitution of this kingdom, to call that resistance the necessary means; thereby plainly founding that power and right of resistance, which was exercised by the people at the time of the happy Revolution, and which the duties of self-preservation and religion call'd them to, upon the necessity of the case." - S.T., xv, 60.

Jekyll said :

"It is far from the intent of the Commons to state the limits and bounds of the subject's submission to the sovereign. That which the law hath been wisely silent in, the Commons desire to be silent in too: nor will they put any case of a justifiable resistance, but that of the Revolution only". - S.T., xv, 97.

Sir John Holland made the same admission :

"My Lords, the Commons would not be understood, as if they were pleading for a licentious resistance; as if subjects were left to their good will and pleasure, when they are to obey, and when to resist. No, my Lords, they know they are obliged by all the ties of social creatures, and Christians, for wrath and conscience sake to submit to their sovereign. The Commons do not abet humoursome factious arms. They aver 'em to be rebellious. But yet they maintain, that that resistance at the Revolution, which was so necessary, was lawful and just from that necessity.

"We do agree that the laws concerning obedience, both human and divine, are very express and positive; and no wonder that the

Homilies and Fathers, dead and living, follow the same way of expressing our duty in general terms. We readily grant this, but it does not follow that there can be no exceptions from the general rules in conscience." - S.T., xv, 111.

Robert Walpole likewise refused to enunciate a general doctrine of resistance :

"Resistance," he said, "is no where enacted to be legal, but subjected by all the laws now in being, to the greatest penalties; 'tis what is not, cannot, nor ought ever to be describ'd, or affirm'd, in any positive law, to be excusable: when, and upon what never to be expected occasions, it may be exercised, no man can foresee: and ought never to be thought of, but when an utter subversion of the laws of the realm threatens the whole frame of a constitution, and no redress can otherwise be hoped for. It therefore does, and ought for ever to stand, in the eye and letter of the law, as the highest offence." - S.T., xv, 115.

54. "And the doctor's refusing," said Sir John Hawles, "to obey that implicit law is the reason for which he is now prosecuted, tho' he would have it believ'd, that the reason he is now prosecuted was for the doctrine he asserted of obedience to the supreme power, which he might have preach'd as long as he had pleas'd, and the Commons would have taken no offence at it, if he had stop'd there, and not have taken upon himself, on that pretence or occasion to have cast odious colours upon the Revolution." - S.T., xv, 120.

55. "'Twas insisted on the first day...that he had expressly affirm'd, that the Revolution was not such a case as ought to be excepted

out of the general rule. This I deny: if such an expression can be found in the doctor's sermon, I shall think no punishment too great for him. 'Tis one thing expressly to affirm the Revolution is such a case as ought not to be excepted out of the general rule, and another thing, not to make the exception. The Apostle, who in general terms enjoins the duties of obedience and non-resistance to the higher powers, makes no exception when he lays down those precepts; nor on the other side does he say, no such case can ever happen, wherein obedience is not to be paid, or resistance not to be made. He is silent in the matter; and the doctor's expression, in this case, is agreeable with that of the Apostle! - S.T., xv, 200.

Harcourt, a little later in his speech, said: "The general rule ought always to be pressed, but the exceptions of extraordinary cases, of cases of necessity, are never particularly to be stated. To point out every such case before-hand is as impossible, as it is for a man in his senses not to perceive plainly when such a case happens." - Ibid., 201.

56. "To aggravate my guilt," Sacheverell complained, "I have been accus'd not only for what I am suppos'd to have said, but for what I am allow'd not to have said: not only for what I have taken notice of in my sermons, but for what I have pass'd by unobserv'd: I have been charg'd with negative crimes; as if what I omitted to say had been omitted with design, and my silence it self were criminal." - S.T., xv, 346.
57. In his reply to the case for the defence, Jekyll unfairly blamed Sacheverell for not excepting the Revolution from his general

doctrine. "Is there no difference between a divines mooted and putting cases of lawful resistance, and excepting the resistance at the Revolution out of the general rule of the illegality of resistance?" He admitted that the House of Commons did not call "upon divines to state the cases wherein resistance is lawful, and wherein not. A task unfit for any one, and more especially for them to meddle with." - S.T., xv, 387. Sacheverell's guilt, therefore, lay evidently in his omission to state catagorically that the Revolution was the single exception to his doctrine of non-resistance.

If Sacheverell was guilty of not excepting the Revolution, how did the Commons support their contention that Sacheverell positively condemned the resistance used at the Revolution?

58. Parker said :

"We say, he has stirr'd up her majesty's subjects to arms and violence; he says, he has declar'd all resistance unlawful; yes - all resistance to the supreme power; but he has never declar'd resistance to her majesty unlawful. He maintains the utter illegality of resistance on any pretence whatsoever to the supreme power, but nowhere says, that in the supreme power he includes her majesty, or that it is illegal to resist her. The utter illegality of resistance to the supreme power upon any pretence whatsoever, her majesty's profess'd enemies will come into, and labour for; meaning only to condemn the resistance that was made against King James the Second, which brought about the Revolution, and any resistance that shall be made against the Pretender, whenever he comes; and Dr Sacheverell goes no further." - S.T., xv, 177-8.

59. Coxe in his Memoir of Sir Robert Walpole wrote : "To bring Sacheverell to a trial, and to distinguish him with an impeachment, managed in the most solemn manner, for a miserable performance, which without such notice, would speedily have sunk into oblivion was an inexcusable degradation of the house of commons, and affords a striking instance of the height of folly and infatuation to which the spirit of party will carry even the wisest of men." (1798) i, p.24.

Lord John Russell wrote : "It must be owned, however, that the Whigs gave a handle to the designs of their enemies. The trial of Dr Sacheverell was needless and imprudent. Under an established government it was not exceedingly wise to proclaim aloud the doctrine of resistance; nor could there be any great danger in leaving a clergyman of no great station to vaunt his absurdities unmolested." - An essay on the history of the England government, etc. (1821) p.146.

60. Somers was against impeachment. (cf. Swift, History of the four last years of the Queen in Works, x, p:24.) Sunderland and Godolphin favoured it. Godolphin thought that he was attacked by Sacheverell under the nickname of Volpone. Sacheverell in his sermon had said : "In what moving and lively colours does the Holy Psalmist paint the crafty insidiousness of such wilely Volpones ?" (S.T., xv, 90) Walpole in a pamphlet anonymously referred to this when he wrote that Sacheverell directed his attack against "one minister of state in particular, whom he was strictly commanded to defame." (Four letters to a friend in North Britain upon the publishing the Tryal of Dr Sacheverell. (1710) p.13.) Bishop Smalridge in an anonymous work noted pertinently :

"It is true, in another audience, 'twas urg'd that there was an ugly word in the sermon; which, tho' most people believed was the chief motive of the impeachment, was, to our surprize, never made any use of in the tryal." (The thoughts of a country gentleman upon reading Dr Sach-everell's tryal, p. 33.)

If these views are correct, that is, that the impeachment was suggested by personal and party animosities rather than by a sincere desire to vindicate the doctrine of resistance, they may partly explain the weakness of the prosecution's case.

61. "'Twas a scurvy mischance that you
stumbl'd upon him,
But a worse to you Whigs that you coul'd
not o'er-run him:
Since it shew'd you too weak in the height
of your glory,
To grapple with one bold honest priest of
a Tory.

.....
But, alas, what a railing and raving you
make,
Now you find yourselves cramp'd by your
foolish mistake,
And confounded at once, by your building
awry,
That republican babel you carry'd too
high."

- The new revolution; or, the Whigs turned Jacobites. (1710) pp. 2-3.

62. "For my part I am amaz'd to see man scruple the submitting to the present king; for if ever man had a just cause of war, he had; and that creates a right to the thing gained by it: the king by withdrawing and disbanding his army, yielded him the throne;

and if he had, without any more ceremony, ascended it, he had done no more than all other princes do on the like occasions." - History of the desertion. (1689) S.T.Wm. III, i, p. 98.

63. Burnet's attitude to the conquest school creates a perplexing problem. In parliament he was accused of being "the inventor of the notion of their majesties being conquerors which he had first of all published in his Pastoral letter." It was carried by 162 votes against 155 "that the said Pastoral letter should be burnt by the common hangman." - Parl. Hist., v, 756. Jan. 21, 1693.

But Burnet, in his History, says: "A notion was started, which by its agreement with their other principles [non-resistance doctrine held by the clergy] had a great effect among them, and brought off the greatest number of those who came in honestly to the new government." - Hist., iii, p. 382. But Burnet did not approve of the theory. "This might have been made use of more justly, if the prince had assumed the kingship to himself, upon king James's withdrawing; but did not seem to belong to the present case." - Hist., iii, p. 384.

Samuel Johnson attacked Burnet's theory in his Notes on the phoenix edition of the Pastoral letter (1694) and in other works such as An argument proving, etc.

64. Samuel Johnson's answer to this argument was: "I know it; He can make them a new world on purpose for them, or take the forfeiture of the old, and dispose of His own creation as He pleases: but then it must appear to be His Will, and He must send a new revelation into the world along with such a highly favour'd prince, to every man that is to be his

subject. For I am not bound to do what God would have me do, till I can certainly know that He wou'd have me do it. Promulgation is of the essence of law." - An argument proving, etc. in Works (1710), pp. 262-3.

65. "A false and dangerous notion, and most justly condemned. The prince of Orange came over by invitation from the body of the nation, expressed or implied; had no other right to do it, and whatever was done against king James, and for the prince and princess of Orange, was, in fact (and could have had no other foundation of justice) done in virtue only of the rights of the people. No act of a king of this country, be the act what it will, can transfer or be the cause of transferring the crown to any other person, no not even to the heir apparent, without the consent of the people, properly given. The interest of government is theirs. Sovereigns are the trustees of it, and can forfeit only to those who have entrusted them, nor can conquest of itself give any right to government: there must be a subsequent acquiescence, or composition, on the part of the people for it, and that implies compact. If this be so with regard to the conquest of a whole nation, it is more strongly that, when the conquest is over the king only of a country, and the war not against the kingdom" (Burnet's History, iii, p. 383, note d.)

66. Defoe in 1705 said: "The University that burnt books separating person and power, should now burn books making a distinction between de jure and de facto king." - Jure divino, p. viii.

Toland wrote: "Everyone sees how impossible 'tis to coin a distinction that can in the least excuse High-Church from perjury in swearing to bear true allegiance to K. William, while they thought K. James had neither parted with, nor could forfeit the right he had to their true allegiance - Yet this oath they broke thro like a cobweb, by the distinction of de jure and de facto: and no doubt applauded themselves for having found out such a happy expedient, as gave them all the protection and advantages of the government and yet left them at liberty to oppose it." - Jacobitism, perjury and popery of High-Church priests. (1710), pp. 4-5.

67. In the addresses to Anne on her accession such phrases as these were normal - "to the imperial crown and throne of your renowned and famous ancestors by an undoubted rightful and lawful succession" ; "descended from the blood royal in the right line" ; "by lineal descent." Her parliamentary title was sometimes mentioned but only after her hereditary one. See the addresses of the Bishop of Durham, Bishop of Norwich, Dr Wake, County of Somerset, Oxford, Westbury, Carlisle, Gloucester, etc., etc.

Cf. also A true defence of H. Sacheverell D.D. in a letter to Mr Dolbein. (1710), pp. 9-10.

68. "The restless endeavours of the modern Highfliers to revive and assert the exploded notions of passive obedience, non-resistance and that princes are jure divino, were never more strenuously asserted than now; ...for coul'd they imprint this foolish notion, which they did not believe themselves, upon the minds of the people, it might be a good preparitive for the reception of the Pretender." - The judgment of K. James the First and King Charles the First against non-resistance, etc. Preface, p. 3.
69. Leslie said : It is observable that in all the last reign, they gave the Pretender no other name but that of Perkin and Impostor. But now Observators, Reviews and all are turn'd about and plead for his birth and own it. What their meaning is in this, I leave to themselves to explain, for I make no innuendoes." - Good old cause (1710), p. 7.
70. It had been argued in the Convention that James had lost his personal right to be king, but there was no definite ruling that James could not transmit his right. This was why the Convention adopted the argument of 'haeres non viventis' put forward by Serjeant Maynard. (see above p. 94.) But in 1702 James was dead and consequently, by Maynard's own argument, could have an heir. And that heir, excluding James, was Anne.
71. Robert Ferguson, writing before the Convention met, said: "The disposal of the crown being fallen to the people by a cess and devolution; the succession unto it is not to be governed by proximity of blood, but by weighing what is most expedient for the benefit of the community ... The pretence of divine right of succession,

which had almost destroyed us of late ... will by this means stand for ever branded and condemned ... We shall thereby foreclose all claim to the crown arising by the plea and pretence of an immediate successor and a next heir; for by the exclusion of all right to the sovereignty in way of descent, there is no room left for any to challenge a title to the government upon that bottom and foundation." - A brief justification, etc. S.T.Wm.III, i, pp. 145-7.

72. Cf. "If the king do manifestly separate his person from and engage it against his crown and dignity so that we cannot defend them both ... none can be bound by this, or any other oath, to defend the king's person, in attempts so contrary to the very reason and end of all government, with the neglect of the other part of our duty which is to defend his crown and dignity ... If any should imagine, that the oath will not suffer us to consider the person and crown of the king thus divided, but that it binds us to assist and defend them together: 'tis true, while they are kept together. But if the king himself divide them, and 'tis become impossible for us to assist his person but we must betray his crown; nor defend his crown without forbearing to assist his person, to say we are bound to assist and defend both, makes a plain repugnancy in the oath and in our duty (to do and not to do the same thing) and consequently the obligation ceatheth." - Obedience due to the present king notwithstanding our oaths to the former. (1689) Som. T., x, pp. 297-8.

"Nor can a man declare it to be a traiterous position in some cases ... to take up arms by the king's authority against his person." - A resolution of certain queries concerning submission to the government. S.T.Wm.III, i, p. 450.

"The oath could certainly have no further obligation to him when he had divested himself of his kingly power, by destroying that very government whereby and in which he was king, so did the declaration about taking up arms upon no pretence against the king fall with them. That declaration, every one will grant me, was made for the preservation of the government which the late king took such indefatigable care to destroy." - A letter to a bishop concerning the present settlement, and the new oaths. Som. T., ix, p. 377.

"But in the way of the passive doctrine to prostitute the lives and liberties of the people of England to the will of the prince is treason against the realm, and higher treason than the high-treason against the prince." - Johnson, Notes on the phoenix edition of the Pastoral letter (1694), p. 30.

"The keeping our allegiance to King James's person would have perjured us; for we owed a higher duty to our country and laws, to which he was sworn as well as we." - Ibid., p. 36.

If the king endeavour to subvert the constitution the people must resist the king in defence of the government." - Resistance and non-resistance stated and decided. (1710), p. 13.

A pamphleteer said that if the prince shall attempt to destroy the government, every one who refuses to defend it is *felo de se*. These people betray the government. - St Paul and her majesty vindicated, etc. (1710), 2nd ed., p. 6.

Defoe asked if James's power, person or office was fought against at the Battle of the Boyne. This question was irrelevant, for, as a Tory who clung to non-resistance and the abdication interpretation of the Revolution pointed out, James at that battle was no longer king in any case. See A true defence of H. Sacheverell, D.D. in a letter to Mr Dolben (1710), p. 6.

73. "The public power of all society is above every soul contained in the same society, and the principle use of that power is to give laws unto all that are under it." - Hooker, Ecclesiastical polity, Bk. I, chap. xvi, 5. Cited by Locke, Second Treatise, § 90.

"Obedience is due to government, and not to the person that governs, but upon the account and for the sake of it; otherwise people might be oblig'd to pay allegiance to a king after he had resign'd his regal office. It is impossible for a king to lose his government, and not lose the allegiance of his subjects, because they are relatives; and according to all relatives, one cannot subsist without the other." - Tindal, An essay concerning obedience to the supreme powers, etc. (1694) S.T.Wm.III, ii, p. 437.

"I don't doubt but to satisfy you that the government may be so distinguished from government, as to reconcile resisting the one, with non-resisting the other." - Resistance and non-resistance stated and decided (1710), p. 12.

74. "In our constitution, he that does not govern by law, does not govern at all and he that does not, nor will not govern at all, cannot, nor will not be king, but ceases to be such from the time he makes his own will, on his civil counsellors advices, the rule of his government, and not the laws." - Comber, A letter to a bishop concerning the present settlement, and the new oaths (1689) Som. T., ix, p. 377.

"The measure of our government is acknowledged to be by law." - Doctrine of passive obedience and jure divino disproved. (1689) S.T.Wm.III, i, p. 368.

"The prince is bound by the laws." - Ibid., p. 369.

"They have left nothing to the king's private discretion, much less to his arbitrary will, but have assign'd him the laws as the rules and measures he is to govern by." - Ferguson, A brief justification, etc. (1689) S.T.Wm.III, i, p. 138.

"Government according to law is essential to our government, otherwise our lawyers are much out that generally tell us our government is a legal, regal, or as Fortescue, a political government in opposition to a despotical, absolute arbitrary or tyrannical government." - Fullwood, Agreement betwixt the present and former governments (1689) S.T.Wm.III, i, p. 419.

"Our monarchy is not absolute and unlimited ...the law is the stated rule and measure of our government." - Masters, The case of allegiance considered (1689) S.T.Wm.III, i, p. 322.

"Our happiness then consists of this, that our princes are tied up to the law as well as we, and upon especial account obliged to keep it up to its full face, because if they destroyed the law, they destroyed at the same time themselves, by overthrowing the very foundation of their kingly grandeur and regal power. So that our government not being arbitrary, but legal, not absolute, but political, our princes can never become arbitrary, absolute or tyrants, without forfeiting at

the same time their royal character by breach of the essential conditions of their regal power, which are to act according to the ancient customs and standing laws of the nation." - A vindication of the late proceedings of the Parliament of England, etc. [By Lord Somers?] Som. T., x, p. 263.

"All kings and princes are, and ought to be bound by the laws, and are not exempted from them: and this doctrine ought to be inculcated into the minds of princes from their infancy." - Political aphorisms (1690) S.T., Wm. III, i, p. 399.

"Kings ought to be subject to their kingdom's laws." - Ibid., p. 394.

"The crown...limited by those laws...the executive acknowledging the just superiority of the law." - Defoe, Jure divino: a satyr. (1706) p. vi.

75. Hoadly in his St. Paul's behaviour towards the civil magistrate (1708) expounded the rule of law. Let us learn from St Paul, he said, that "the laws of the Roman state were above the executive power; and that the authority of the magistrate could not make that law which was against the written laws; or oblige him to comply with what was injurious to his civil privileges." The king is merely the executive and he must be governed by the same laws as the subject. If we embrace the notion of absolute power with the will of the executive above law, "what must we think of the envied constitution under which we live and, by the virtue and power of laws, all enjoy the chief happiness that humane life can wish for? What must we think of that Revolution in which high and low so unanimously joyn'd chiefly to rescue our laws from a dispensing power; and to divest the executive from all pretence to a superiority over the legislature? And what must we think of these magistrates whom the

present age beholds with veneration...who, tho commissioned by the supreme executive power yet acknowledge no rule of their conduct but what is prescribed to them by the legislature?" Hoadly's concluding words are : "Let our government by laws be the chief object of our wordly concerns."

The law is superior to the will of the king, said a pamphleteer "and therefore to say here in England that the king is unaccountable to his subjects is stuff." - St Paul and her majesty vindicated. (1710) pp. 3, 5.

76. In the Declaration of Nottingham, 1688, it was stated that to resist a king governing by law was owned to be rebellion, but if the prince makes his own will the law, "to resist such a one, we justly esteem no rebellion but a necessary defence." - Cited by Ridpath, The peril of being zealously affected but not well. (1709) p.10.

A monarch observing the laws must not be resisted - The doctrine of passive obedience and jure divino disproved. (1689) S.T.Wm.III, i, p. 369.

Non-resistance applied to a king governing by law. That doctrine "was intended for the security of, and was made to, a king governing by law, and therefore did not concern the late king from the hour he set up his own will against the laws." - Comber, A letter to a bishop concerning the present settlement, and the new oaths. (1689) Som. T., ix, p. 377.

Masters said that we must distinguish between maladministration and illegal administration. For the former, the king can be proceeded against only judicially. For the latter, the people may resist, and "subjects will be excused before God for defending themselves." - The case of allegiance considered. (1689) S.T.Wm.III, i, p. 324.

The king "is safe and impregnable while circumscrib'd by law." - Plain English, etc. (1691) S.T.Wm.III, ii, p. 182.

A writer in 1710, defending the doctrine of resistance, said that the executive was sole-

ly in the Queen and "an Hoadleian doth therefore believe, that whosoever doth resist this executive power he shall receive to himself damnation; and so therein doth acknowledge that the authority (that is) the legal power of the crown ought not to be resisted in any case whatsoever." - Chuse which you please, etc. (1710) p. 4.

Another Whig, writing in the same year, said he challenged anyone "to name any one Whig who ever denied it to be a damnable sin to resist lawful and just government and governors." - A vindication of the faults on both sides. (1710) p. 37.

"No man ever yet affirm'd, that the Queen's authority lawfully exercis'd is resistable; on the contrary, they whom you [Sacheverell] deny to be genuine sons of the Church say, it is damnable to resist the authority of the prince acting according to the laws." - Some short remarks ... in a letter to Dr S.M-L-G.E. [Smalridge]. (1711) p. 12.

"It is in vain to object Rom. xiii, 2, Whosoever therefore resisteth the power, resisteth the ordinance of God, and they that resisteth shall receive to themselves damnation; for that relates only to magistrates governing according to law." - Parliamentary right maintain'd, etc. (1714) p. 35.

77. Sherlock, before he took the oaths, wrote: "If the government be dissolved, and honour and property dissolved with them, and then I doubt the mobile will come in for their share in the new divisions of lands, and set up for men of as good quality as any, for if our laws are gone, we return to a state of nature, in which all men are equal, and all things common; this I believe you will not be for." - A letter to a member of the Convention. (1688) Som. T., x, p. 189.

Cf. "But now, how contrary is this to those new models which some politick architects are proposing to, or rather imposing upon the nation? Would they reduce us to a state of nature, wherein the people are at liberty to

agree upon any government, or none at all? They will have to abolish monarchy, episcopacy and all fundamental laws established by Magna Carta and all successive parliaments." - Reflections upon our late and present proceedings in England. Som. T., x, p. 180.

78. "And to speak freely; the whole solemnity of the coronation appears to carry in it evident marks of consent and stipulation." - Some considerations touching succession and allegiance. (1689) S.T.Wm.III, i, p. 336.

It was easy, said Peter Allix, to convince any rational man that there was an original contract between the king and the people merely by reminding him of the coronation oath and the oath of allegiance which are "the real seal of that original contract." - An examination of the scruples of those who refuse to take the oath of allegiance. (1689) S.T.Wm.III, i, p. 302.

This, too, was Samuel Johnson's view of the contract. The "contract is still continued in the coronation oath and the oath of allegiance." - An argument proving, etc. (1692) in Works, p. 276.

The whole of the Bill of Rights was often regarded as a renewal of the original contract. In the debates on the Abjuration Bill, April, 1690 Lord Digby said: "The foundation of the government is the Bill of Rights: wherein the king promises his part, etc. and we swear fealty. This is our original contract: if there be any, I am of opinion that is it." - Grey's Debates, x, p. 75.

Ridpath took the same view. See his The peril of being zealously affected, but not well, etc. (1709) p. 6.

Macaulay calls the Bill of Rights, "this great contract between the governors and the governed, this titledeed by which the king held his throne and the people their liberties." - Hist., iv, p. 1663.

79. "The idea that allegiance constituted a mutual tie to which either party could put an end leaves its traces even in English history...If, in fact, this solemn notice [diffidatio] that allegiance had been renounced was given, the levying of war against the king was probably not treason till Edward III's statute. Even were that statute a conspiracy to levy war was no treason. When Edward II and Richard II were deposed, there were no such theoretical difficulties as were felt in 1688." - Holdsworth, History of English law. 3rd ed., iii, pp.461-2.

In view of these changes between the conditions mentioned above, and Coke's time, we can appreciate why thinkers after 1689 usually appealed to the mediaeval period. On the reference to the deposition of Edward II and Richard II, cf. above, p. 110.

80. "'Tis upon this account affirmed of an English king, that he can do no wrong, because he can do nothing but the law empowers him." - A brief justification. S.T.Wm.III, i, p. 138.

Burnet said that some quoted the maxim to prove that James's ministers and not James should have been punished. "To all which", he said, "this is to be answered, that the maxim The king can do no wrong is perverted to a sense very different from that which was at first intended by it, for the meaning of it is only this, that the king's power cannot go so far as to support him in the doing of any injustice or wrong." - An enquiry into the present state of affairs. S.T.Wm.III, i, p. 131.

"That the kings of England can do nothing as kings, but what, of right, they ought to do: that the king can do no wrong", etc. Shower, A letter to a convocation man. (1697) p. 31.

"This I take to be the foundation of that saying The King can do no wrong; that is, he has no right invested in him to wrong any man, but is oblig'd by law as well as conscience, to govern and conform himself to the laws of his kingdom." - The liberties of England asserted, etc. (1714) p. 7.

81. "We have a maxim in law, That the king can do no wrong, because he is suppos'd to do all things by his ministers." Although this writer takes this interpretation, nevertheless, he is compelled to make the king responsible. The king may be resisted when he "shall chuse such ministers as will act against the laws, and defend them therein." - A resolution of certain queries, etc. (1689) S.T.Wm.III, i, p. 447.

"Tis presumed he can do no wrong... If the king has erred...in God's name let his ministers be called to account." - Reflections upon our late and present proceedings in England, (1689) Som. T., x, p. 182.

"The unaccountable king was dethroned, but his accountable ministers continued in play." - Defoe, Jure divino (1706) p. iv. Defoe, of course, was sarcastic.

Burnet seems to have changed his views. In an undelivered speech on the Treaty of Utrecht, he wrote: "I am sure I have such a profound respect for the queen, that no part of what I may say can be understood to reflect on her in any sort: her intentions are, no doubt, as she declares them to be, all for the good and happiness of her people: but it is not to be supposed, that she can read long treaties, or carry the articles of them in her memory: so if things have been either concealed from her, or misrepresented to her, she can do no wrong: and if any such thing has been done, we know on whom our constitution lays the blame." - History, vi, p. 155.

82. The Observator said that the Test Act excluding men from civil and military offices was null and void for no act could preclude a king from making use of his subjects. The author of The case of the Protestant dissenters represented and argued took the same view. See A letter to a Bishop concerning the present settlement, and the new oaths. Som. T., ix, p. 376.

"No human law is binding which is contrary to the Scripture, or the general law of nature." - Political aphorisms. (1690) S.T., Wm.III, i, p. 393.

Reason, said Defoe, was the test of law. "All law or power that is contradictory to reason is ipso facto void of itself, and ought not to be obeyed." - The original power of the collective body of the people, etc. (1701) in Works (1703), i, p. 139.

Stillington practically said the same thing by justifying the breach of oath of allegiance to James II, not on legal grounds but because the oath was contrary to public good.

83. "It has been fatal to favourites, to judges, to Lords, and to kings, and will certainly be so even to Parliaments, if they descend to abuse the people they represent." - History of the Kentish petition. (1701) p. 19.

"And tho' there are no stated proceedings to bring you to your duty, yet the great law of reason says, and all nations allow, that whatever power is above law is burthensom and tyrannical; and may be reduc'd by extrajudicial methods : you are not above the peoples resentments, they that made you members, may reduce you to the same rank from whence they chose you." - Legion's memorial. (1701) p. 1.

The people have not only a right to resist the king but also the House of Commons and House of Lords.- Defoe, The original power, etc. (1701) in Works (1703), i, p. 142.

If the House of Commons act arbitrarily and illegally "it is the undoubted right of the people of England to call them to an account for the same, and by Convention, assembly of force may pryceed against them as traitors and betrainers of their county. [sic]

Legion's memorial. (1701) p. 3.

"Englishmen are no more to be slaves to Parliament than to a king." - Ibid., p. 4.

84. Locke speaks of restraining the exorbitances of monarchy by "balancing the power of government by placing several parts of it in different hands." - Second Treatise. § 107.

"The three several powers vested in the king, lords and commons are like three perfect concords on music, which being exactly tuned to one another, upon proper instruments, make admirable harmony; but if you stretch any one string, beyond its proper pitch, you put all out of tune, and destroy the whole concert." - Mackworth, A vindication of the rights of the commons of England. (1701) Som. T., xi, p. 285.

Swift said that it will be an eternal rule of politics among every free people that there is a balance of power to be carefully preserved in every state. "A tyrant need not be a single man. In fact, if any one of the three constituent powers in the state usurps the powers of the two others, it becomes a tyrant." - A discourse of the contests and dissentions, etc. (1701) pp. 5, 6-9.

"As all the constituent parts, aggregately considered, ought to have their due weight, so no one part is to invade the others right." - Davenant, Essays on peace at home, etc. (1704) in Works (1771), iv, p. 289.

"where one of the extremes comes so far as to overbalance the other: I cannot see but the government must die, as it is in natural bodies, when one humour is over all the rest in too great disproportion." - The British constitution, etc. (1712) p. 9

85. "But to set up a fourth estate, consisting of the people, with distinct rights, and to leave the other three remaining, would be a strange sort of government... Which part of the constitution was to be subordinate to this fourth estate? Their representatives only? This would hardly have proved the case, for we all have seen by experience, that when the people get the power, they soon lay aside both king and lords." - Davenant, Essays upon peace at home, etc. (1704) in Works (1771), iv, p. 292.
86. Kettlewell wrote: "'Tis true, our Parliament are taken into the government and have a share in the highest acts, as making laws... This share of them in the legislation as I conceive, is not a sovereign's, but a subject's part. They are called in to consult and with authority to negative upon all laws to be imposed on them, which is a great security indeed of their being well governed and bound to nothing but what is for their benefit: no law being to be made or repealed without their own consent. But this liberty of consulting and authority of negative is still under the king the only sovereign: not on equal terms with him as two independent sovereigns ... Theirs is only a subjects part ... and he alone is supreme both in legislation and execution. For our law and church, too, fixes all the sovereignty of the realm solely in the king." - Christianity a doctrine of the cross. (1691), in Works, ii, p. 180.

87. "Nothing but that which the king pleases to allow of is to pass for law: The laws not taking their coercive force (as Judicious Hooker*well observes) from the quality of such as devise them, but from the power that giveth them the strength of laws. So that, to determine the matter logically, the legislative is either largely and improperly or strictly and properly taken: largely taken, it signifies any power, which hath the authority to provide the materials of a law and to judge what is just, convenient or necessary to be enacted: and to declare when any matters, duly prepared, are made and granted into a law: and this ministerial sort of legislative power, improperly so called, the two houses have and exercise, yet by authority from the crown. But then the legislative power is strictly and properly taken for the power of sanction, or from that commanding, ordaining power, which gives life and being to the law, and force to oblige the consciences of the subject: and this is radically and incommunicably in the king as sovereign." - Bibliotheca politica, p. 233.

* The quotation is from the Ecclesiastical polity, Bk. I, chap. x, sect. 8: "Howbeit, laws do not take their restraining force from the quality as such as devise them, but from the power which doth give them the strength of laws." The quotation is misapplied. The force, to which Hooker refers, is not the king but the consent of the people. For, Hooker amplifies thus: "Laws they are not therefore which public approbation hath not made so."

This passage from Hooker is cited by Allix in his An examination of the scruples of those who refuse to take the oath of allegiance. (1689) He says: "We..see clearly that our judicious Hooker in his Ecclesiastical polity [sic] Book I, chap. 10 maintains,

that all civil governments in the world are derived from the deliberation, consultation, and consent of the parties concerned, and consequently the power of making laws belong to the body of the community: and that it is mere tyranny for any prince to arrogate this power of imposing laws, except the same be exercised by divine authority or by the authority at first deriv'd from the consent of the people." - S.T.Wm.III, i, p. 311.

88. "The Lords might advise and the Commons petition, but the enacting part is only in the king. He enacts with their advice, not they with his ... Threescore negatives cannot make an affirmative. A negative is only saying, This shall not be a law. But who has power to say, This shall be a law? ... That is only the king, whose fiat stamps the authority of a law upon what the three estates have prepared. And if he likes it not, he may reject it." - Jus sacrum, etc. 2nd ed. (1712) p. 40.
89. Tindal, who followed Locke, saw this difficulty, but made no attempt to suggest a way out. "And whoever the legislators entrust ... are their ministers in putting their will, the laws, into execution: to which they can have only a precarious right, dependent on the pleasure of the legislature, except where the executive is lodg'd with one without whose consent no law can be made." - Tindal, The rights of the Christian Church asserted, etc. (1706) 4th ed. (1709) p. xvi.

APPENDIX II

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There are no modern works on the doctrines of resistance and non-resistance for the period covered by this study. Numerous books dealing with the period have been consulted, but the amount of information derived from them is, in each case, so small that it would be misleading to include them in this bibliography. Some of them are acknowledged in the footnotes. A few, which are most helpful for the political, legal and constitutional background, and for a comparative study of the doctrines, are noted below. Of the contemporary pamphlets, there are literally thousands which throw light on the doctrines, but it is possible to give here only a small selection.

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92. ----- Best of all, being the student's thanks to Mr Hoadly, wherein Mr Hoadly's second part of his Measures of submission (which he intends soon to publish) is fully answered, etc. London, 1709.

93. ----- The good old cause, further discussed in a letter to the author of the Jacobite's hopes reviv'd. London, 1710.

94. ----- A view of the times, their principles and practices ; in the Rehearsal : with prefaces and indexes by Philalethes. 6 vols. London, 1750.

Letter (A) from Captain Tom to the mobb, etc. See Defoe (D.)

Letter (A) to a bishop concerning the present settlement, etc. See Comber (T.)

95. Letter (A) to a friend concerning the behaviour of Christians under the various revolutions of state governments. London, 1693.

(S.T.Wm.III, ii, pp.159-169.)

96. Letter (A) to a friend, occasion'd by the contest between the Bishop of Exeter and Mr Hoadly. London, 1709.

Letter (A) to a member of the Convention. See Sherlock (W.)

Letter (A) to Sir J[acob] B[anks]...concerning the late Minehead doctrine, etc. See Benson (W.)

97. Letter (A) to the good people of Great Britain. London, 1710.

98. LLOYD (WILLIAM). A discourse of God's way of disposing of kingdoms, etc. London, 1691.

99. LOCKE (JOHN). The works of John Locke. 11th. ed. 10 vols. London, 1812.

100. ----- Two treatises of government : in the former, the false principles and foundations of Sir Robert Filmer and his followers are detected and overthrown. The latter is an essay concerning the true original extent and end of civil government. London, 1690.
(Works, v, pp.207-406.)

101. LONG (THOMAS). A resolution of certain queries concerning submission to the present government. By a divine of the Church of England, as by law establisht. London, 1689.
(S.T.Wm.III, i, pp.439-465.)

102. MACKWORTH (SIR HUMPHREY). A vindication of the rights of the Commons of England.

(Som.T., xi, pp.276-315.)

103. MAITTAIRE (MICHAEL). The doctrine of passive obedience and non-resistance stated; and its consistence with theology, reason, justice, the Revolution, our laws and policy, impartially consider'd. London, 1710.

104. MASTERS (SAMUEL). The case of allegiance in our present circumstances considered. In a letter from a minister in the city to a minister in the country. London, 1689.
(S.T.Wm.III, i, pp.318-333.)

105. MATHER (JOHN). A sermon preached before the University of Oxford, at St Mary's on

Tuesday, May 29, 1705, being the anniversary
of K.Charles II restoration. Oxford,1705.

Memorial (The) of the Church of England, etc.
See Drake (J.)

Memorial (The) of the State of England, etc.
See Toland (J.)

Memorial (A) offered to...the Princess Sophia,
etc. See Burnet (G.)

106. MILBOURNE (LUKE). Tom of Bedlam's answer
to his brother Ben Hoadly, St Peter's-Poor
parson, near the Exchange of Principles.
London,1709.

Modern (The) fanatick, etc. See Bisset (W.)

107. Modest (A) answer to the four immodest
letters to a friend in North Britain.
London,1710.

108. Modest (A) inquiry into the causes of the
present disasters in England. And who they are
that brought the French fleet into the Channel,
describ'd. London,1690.
(S.T.Wm.III, ii, pp.95-104.)

109. New (The) revólution : or, the Whigs
turned Jacobites. A poem. London,1710.

Obedience due to the present king, etc. See
Whitby (D.)

Objections (The) of the non-subscribing London
clergy, etc. See Swinfen (J.)

Opinion (The) is this : That resistance may be
used, etc. See Johnson (S.)

110. OLDISWORTH (WILLIAM). A vindication of the
Right Reverend the Lord Bishop of Exeter,
occasion'd by Mr Benjamin Hoadly's reflections
on his Lordship's two sermons of government...

March 8, 1704 and...March 8, 1708.

London, 1709.

Original (The) power of the collective body of the people. See Defoe (D.)

111. PARKER (SAMUEL). Religion and loyalty; or, a demonstration of the power of the Christian church within it self, the supremacy of sovereign powers over it, the duty of passive obedience...exemplified out of the records of the church and empire, from the beginning of Christianity to the end of the reign of Julian. London, 1684.

112. ----- Religion and loyalty. The second part, etc. London, 1685.

Peril (The) of being zealously affected, but not well, etc. See Ridpath (G.)

113. Plain English; or an enquiry into the causes that have frustrated our expectations from the late happy Revolution, and obstructed the progress of our affairs, consider'd in relation to the present conspiracy, and what advantages have by the foresaid means been given to the enemies of the government.

(S.T.Wm.III, ii, pp.177-186.)

114. Political aphorisms : or the true maxims of government displayed, wherein is likewise proved, that paternal authority is no absolute authority, and that Adam had no such authority, that the Protestants in all ages did resist their cruel and evil and destructive princes. By way of challenge to Dr William Sherlock and ten other new dissenters, and recommended to be read by all Protestant Jacobites.

London, 1690.

(S.T.Wm.III, i, pp.386-402.)

115. Prelude (A) to the tryal of skill between Sacheverelism and the constitution of the monarchy of Great Britain. Occasion'd by the printing Dr Sacheverell's Answer to his impeachment. With reflexions upon the notions of Bishop Sanderson, and the deans, Hicks, Sherlock, and Atterbury; with other clergy-men, who have departed from the doctrine of the Church of England, profess'd in Queen Elizabeth's days.
London, 1710.

116. PRIDEAUX (HUMPHREY). Letters...to John Ellis, Under Secretary of State, 1674 - 1722.
Ed. by E.M.Thompson. (Camden Soc., N.S., 15.)
Westminster, 1875.

117. Proceedings (The) of the present parliament justified by the opinion of the most judicious and learned Hugo Grotius ; with considerations thereupon. Written for the satisfaction of some of the learned clergy, concerning the original right of kings, their abdication of empire; and the people's inseparable right of resistance, deposing, and of disposing and settling of the succession of the crown.
London, 1689.
(S.T.Wm.III, i, pp.178-184.)

118. Queries to the new hereditary right men.
London, 1710.

Reasons against receiving the Pretender, etc.
See Hoadly (B.)

Reasons (The) of the absenting clergy, etc.
See Swinfen (J.)

119. Reflections upon the late great Revolution. Written by a lay-hand for the satisfaction of some neighbours.
London, 1689.
(S.T.Wm.III, i, pp.242-265.)

120. Resistance and non-resistance stated and decided. In a dialogue betwixt a Hotspur-High-Flyer, a canting Low-Church man, and B--f, censor of Great Britain. London, 1710.

Resolution (A) of certain queries concerning submission, etc. See Long (T.)

121. Revolution (The) no rebellion ; or serious reflections offered to the Reverend Mr Benjamin Hoadly; occasion'd by his Considerations on the Bishop of Exeter's sermon before her majesty, March 8, 1708. By a citizen of London, a lover of the present establishment in church and state. London, 1709.

122. RIDPATH (GEORGE). The peril of being zealously affected but not well : or, reflections on Dr Sacheverell's sermon, etc. London, 1709.

123. SACHEVERELL (HENRY). A defence of her majesty's title to the crown, and a justification of her entering into a war with France and Spain, as it was deliver'd in a sermon preach'd before the University of Oxford, June 10, 1702, etc. Oxford, 1702.

----- 2nd. ed.

London, 1710.

124. ----- The perils of false brethren both in church and state : set forth in a sermon before the...Lord Mayor, Aldermen, and citizens of London at the Cathedral-Church of St Paul, Nov. 5, 1709. London, 1709.
(S.T., xv, 69-95.)

125. St Paul and her majesty vindicated in proving from the apostles own words, Rom. xiii, that the doctrine of non-resistance as commonly taught, is none of his. London, 1710.

126. SELLAR (ABEGNEGO). The history of passive obedience since the Reformation : taken from the authentick writings of the greatest doctors of the Church of England : in two parts. To which is added, an appendix containing the opinions of the most eminent divines of the Churches of Scotland and Ireland in the same point. 3 parts. Amsterdam, 1688-90.

127. SHERLOCK (WILLIAM). The case of allegiance due to sovereign powers stated and resolved according to Scripture and reason, and the principles of the Church of England ; with a more particular respect to the oath, lately enjoined, of allegiance to their present majesties K. William and Q. Mary.

London, 1691.

128. ----- A letter to a member of the Convention.

London, 1688.

(Som. T., x, pp. 185-190.)

129. ----- Their present majesties government proved to be thoroughly settled, and that we may submit to it, without asserting the principles of Mr Hobbs, shewing also that allegiance was not due to the usurpers after the late Civil War. Occasion'd by some late pamphlets against... Dr Sherlock.

London, 1691.

130. ----- A vindication of the Case of allegiance due to sovereign powers : in reply to an Answer to a late pamphlet, intituled "Obedience and submission to the present government, demonstrated from Bishop Overall's convocation book. With a postscript, in answer to Dr Sherlock's Case of allegiance.

London, 1691.

131. SMALRIDGE (GEORGE). The thoughts of a country gentleman upon reading Dr Sacheverell's tryal in a letter to a friend.

London, 1710.

Some considerations touching succession and allegiance. See Allix (P.)

132. SOMERS (JOHN SOMERS, Lord). A collection of scarce and valuable tracts, etc. 2nd. ed. revised, augmented and arranged by W. Scott. 13 vols.

London, 1809-15.

Speech (A) without doors. See Defoe (D.)

133. STEELE (SIR RICHARD). The crisis : or a discourse representing...the just causes of the late happy Revolution and the several settlements of the crowns of England and Scotland on her majesty...With some seasonable remarks on the danger of a Popish successor. London, 1714.

134. STILLINGFLEET (EDWARD). The case of an oath of abjuration considered; and the vote of the... Houses of Commons vindicated, in a letter to a friend. London, 1693.

135. ----- A discourse concerning the unreasonableness of a new separation on account of the oaths. With an answer to the History of passive obedience so far as relates to them. London, 1689.

(S.T.Wm.III, i, pp.598-614.)

136. ----- A vindication of their majesties authority to fill the sees of the deprived bishops. In a letter out of the country, occasioned by Dr B ---s refusal of the bishopric of Bath and Wells. London, 1691.
(S.T.Wm.III, i, pp.635-639.)

137. Submissive (A) answer to Mr Hoadly's Humbly reply to my Lord Bishop of Exeter. London, 1709.

138. SWIFT (JONATHAN). The prose works of Jonathan Swift. Ed. by T Scott. With a biographical introduction by W.E.H. Lecky. 12 vols. (Bohn's standard library.) London, 1898-1911.

139. ----- A discourse of the contests and dissensions between the nobles and commons in Athens and Rome, with the consequences they had upon both those states. London, 1701.
(Works, i, pp.228-270.)

140. SWIFT (JONATHAN). [continued.] The Examiner. (Swift's contributions are in Works, ix, pp. 67-299.)

141. ----- The public spirits of the Whigs, set forth in their generous encouragement of the author of the Crisis, with some observations on the seasonableness, candour, erudition, and style of that treatise.

London, 1714.

(Works,

142. ----- The sentiments of a Church of England man with respect to religion and government. [Written in the year 1708. Probably appeared for the first time in Miscellanies in prose and verse, 1711.]
(Works, iii, pp. 49-75.)

143. SWINFEN (JOHN). The objections of the non-subscribing London clergy, against the Address from the Bishop of London and the clergy of London and Westminster printed in the Gazette of Thursday, Aug. 22, 1710. Humbly offer'd in a letter from a clergy-man in London to a member of parliament in the country. By the author of the Reasons of the absenting clergy.

London, 1710.

144. ----- Reasons of the absenting clergy for not appearing at St Pauls on Monday, Aug. 21, 1710 when the Address from the Bishop and clergy of London was propos'd and sign'd, etc.

London, 1710.

Their present majesties government proved to thoroughly settled, etc. See Sherlock (W.)

Thoughts (The) of a country gentleman upon reading Dr Sacheverell's tryal. See Smalridge (G.)

Thoughts (The) of an honest Tory, etc. See Hoadly (B.)

145. TILLY (WILLIAM). A return to our former good old principles and practice, the only way to restore and preserve our peace : a sermon preach'd before the University of Oxford... May the 14th., 1710...With a letter to Dr Sacheverell. London, 1710.
146. TINDAL (MATTHEW). An essay concerning obedience to the supreme powers and the duty of subjects in all revolutions, with some considerations touching the present juncture of affairs. London, 1694.
(S.T.Wm.III, ii, pp.431-461.)
147. ----- An essay concerning the laws of nations, and the rights of sovereigns. London, 1694.
(S.T.Wm.III, ii, pp.462-475.)
148. TOLAND (JOHN). Anglia libera, or the limitations and succession of the crown of England explained and asserted : as grounded on his majesty's speech, the proceedings of parliament, the desires of the people, the safety of our religion, the nature of our constitution, the balance of Europe and the rights of mankind. London, 1701.
149. ----- Jacobitism, perjury and popery of High-Church priests. London, 1710.
150. ----- The judgment of K. James the First and King Charles the First against non-resistance, discover'd by their own letters and now offer'd to the consideration of Dr Sacheverell and his party. London, 1710.
151. ----- The memorial of the State of England in vindication of the queen, the church and the administration design'd to rectify the mutual mistakes of Protestants and to unite their affections in defence of our religion and liberty. London, 1705.
(Som.T., xii, pp.526-574.)

Tom of Bedlam's answer to his brother Ben Hoadly. See Milbourne (L.)

152. TRAPP (JOSEPH). The character and principles of the present set of Whigs.
London, 1711.

Treatise (A) of monarchy, etc. See Hunton (P.)

153. True (A) defence of Henry Sacheverell, D.D. in a letter to Mr D---n. By L.M.N.O.
London, 1710.

154. True (The) genuine modern Whig address. To which is added, an explanation of some hard terms now in use : for the information of all such as read or subscribe addresses.
n.p., 1710.

(Som.T., xii, pp.658-662.)

True (The) genuine Tory-address, etc. See Hoadly (B.)

155. True (A) relation of the manner of the deposing of King Edward II, together with the articles which were exhibited against him in parliament. As also, an exact account of the proceedings and articles against King Richard II, and the manner of his deposition and resignation, etc.
London, 1689.

156. TYRRELL (SIR JAMES). Bibliotheca politica : or, an enquiry into the antient constitution of the English government, etc. New ed.
London, 1718.

157. ----- A brief disquisition of the law of nature, according to the principles and method laid down in the Reverend Dr Cumberland's (now Lord Bishop of Peterborough's) Latin treatise on that subject : as also his confutations of Mr Hobbes's principles put into another method, with the right reverend author's approbation.
London, 1692.

Vindication (A) of the Right Reverend the Lord Bishop of Exeter, etc. See Oldisworth (W.)

Vindication (A) of their majesties authority to fill the sees of the deprived bishops. See Stillingfleet (E.)

Voice (The) of the addressers, etc. See Hoadly (B.)

Voice (The) of the people, no voice of God. By F.A. See Atterbury (F.)

158. WAGSTAFFE (WILLIAM). Crispin the Cobler's confutation of Ben H -- dly, in an epistle to him. London, 1711.

159. WALPOLE (SIR ROBERT). Four letters to a friend in North Britain, upon the publishing the tryal of Dr Sacheverell. London, 1710.

160. WARRINGTON (HENRY BOOTH, Earl of). An impartial inquiry into the causes of the present fears and dangers of the government. Being a discourse between a Lord Lieutenant and one of his Deputies summon'd to hold a lieutenancy for raising the militia. London, 1692.

(S.T.Wm.III, ii, pp.218-233.)

161. ----- The charge of...Earl of Warrington to the Grand Jury...Chester, 25th Apr., 1693.

(S.T.Wm.III, ii, pp.342-348.)

162. ----- The charge of...Earl of Warrington to the Grand Jury...Chester, 11th Oct., 1692.

(S.T.Wm.III, ii, pp.201-208.)

163. What has been may be again: ...Published to let us see the advantage we may expect from those new-revived maxims, that the supreme power is in the people and that rebellion is lawful. Address'd to the modern Whigs. London, 1710.

164. WHITBY (DANIEL). Obedience due to the present king notwithstanding our oaths to the former. Written by a divine of the Church of England. London, 1689.

(Som.T., x, pp.296-300.)

165. WILLIAMS (JOHN). A defence of the Archbishop's sermon on the death of her late majesty of blessed memory : and of the sermons of the late Archbishop, Bishop of Litchfield and Coventry, Bishop of Ely, Bishop of Salisbury, Dr Sherlock, Dr Wake, Mr Fleetwood, etc. preach'd upon that and several other solemn occasions. Being a vindication of the late queen, his present majesty, and the government from the malicious aspersions cast upon them in two late pamphlets : one [by T. Tenison] entitled, Remarks on some sermons, etc. the other [by T.Ken] A letter to the author of a sermon preach'd at the funeral of her late majesty Queen Mary. London, 1695.

(S.T.Wm.III, ii, pp.522-538.)

166. WITHERS (JOHN). The history of resistance, as practised by the Church of England : in which it is proved, from most authentic records, that in every reign since the Reformation of religion the said Church hath aided and assisted, justified and approved of, such subjects as have defended themselves against the oppressions of their tyrannical, though natural princes. Written upon occasion of Mr Agate's sermon at Exeter on the 30th January, and in defence of the late Revolution, the present establishment, and the Protestant succession. London, 1710.

(Som.T., xii, pp.249-267.)

167. Word (A) to the wise for settling the government. s.sh. London, 1689.

168. WYNNE (ROBERT). The case of the oaths stated. London, 1689.

(S.T.Wm.III, i, pp.340-347.)